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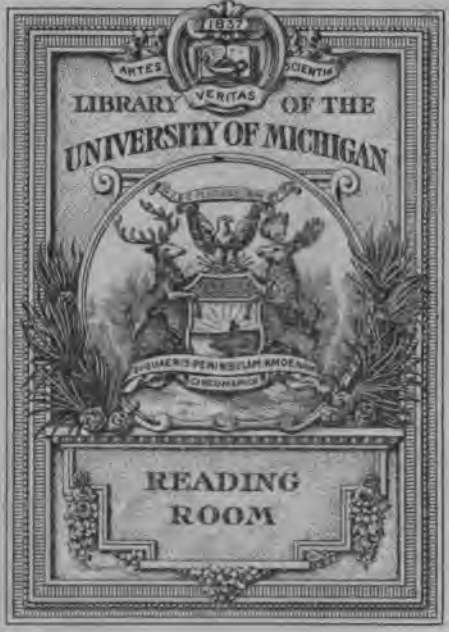
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POLITICAL PARTIES IN THE UNITED STATES

VOLUME I

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A HISTORY OF POLITICAL PARTIES IN THE UNITED STATES

405

BY

J. P. GORDY, PH.D.

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IN FOUR VOLUMES

VOLUME I

SECOND EDITION, THOROUGHLY REVISED



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J. P. GORDY.

PREFACE.

IN presenting this edition of the History, the author desires to state that since the first publication of the work his further studies have led him to the conclusion that the political philosophy of Alexander Hamilton was held by a small minority of the Federalists who determined the policy of the country up to the election of John Adams; that this philosophy, or rather the measures growing out of it, led to the overthrow of the party in 1800; and that there was little difference between the opinions of the majority of the Federalists at that time and those of the Republican leaders in 1815.

Not only has the work been reconstructed in accordance with that conclusion, many of the chapters being recast and others entirely rewritten, but it has been extended to embrace four volumes instead of three as originally intended. Practically a new production, therefore, it is offered as the result of the author's more exhaustive labors in this field of study, in the hope that it may prove helpful alike to the teacher, the student of civics, and that increasing class of Americans who, with an awakened sense of their citizenship in the greatest of

republics would familiarize themselves with the political history of their country.

The author is under obligations to Professor J. A. Woodburn of Indiana University for pointing out some misstatements of fact, and to his own colleague, Professor J. V. Denney, and Mr. Theodore F. Neu of New York, for many improvements in the form of the work.

OHIO STATE UNIVERSITY,
May 1, 1900.

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THE HISTORY

OF

POLITICAL PARTIES IN THE UNITED STATES.

CHAPTER I.

WITHOUT AN ADEQUATE GOVERNMENT.

ALL beginnings, as George Eliot somewhere says, are make-believes. But for the purposes of this book, we may say that the history of political parties in the United States begins with the organization of the Federalists.

The first question to ask of this as of every political party is: "What is it trying to do? what motives influence the men belonging to it to associate together in a political organization? what public want does it seek to satisfy?" Let us put this question to the Federalist party; let us ask what it was organized to do.*

What the Federalist party was organized to do.

* Political Science Quarterly, Vol. VI., 593.

To this question it is possible to give a definite answer: The Federalist party was organized to give the country a government with power enough to do the things essential to the well-being of the nation.

Powers which the Continental Congress might have exercised.

From one point of view, there seems no reason why the nation might not have had such a government from the start. In declaring the colonies free and independent states, the Continental Congress had exercised the highest act of sovereignty. If its members had realized all the consequences of this declaration; if they had seen that it meant the birth of one nation—not thirteen—and that this nation could not be sovereign and independent with reference to other nations without being sovereign with reference to its own constituent parts, the Continental Congress might have assumed, at the outset, to represent in all respects the sovereignty of the new nation. It might have passed such laws as it deemed best, and called upon its armies to execute them. Being revolutionary in its origin, it would have gained all the power to which it could have made good its claim.*

* The debate in the Congress of 1774 on the question as to the method of voting, "whether by colonies, or by the poll, or by interests," showed that some of its members appreciated what the logical consequences of separation from Great Britain would be. Patrick Henry said: "Government is dissolved. Where are your landmarks, your boundaries of colonies? We are in a state of nature, sir. . . . The distinction between Virginians, Pennsylvanians, New Yorkers, and New Englanders are no more. I am not a Virginian, but an American. . . . All America is thrown into one mass."—Works of John Adams, II., 366–8.

But even upon the supposition that the members of the Continental Congress had been able to shake themselves free from their environment, had been able to throw off old habits of thought like a worn-out coat, it is impossible to suppose that the people of the various states would have been able to cut themselves loose from their political past. If, therefore, the Continental Congress had undertaken to play the absolute sovereign, they would have crushed it into atoms. As government is only the executive organ of society, the organ through which its will becomes operative, through which its habit acts,* the consequences of an attempt of the Continental Congress to run directly counter to the will of the people of the various states, to violate all their habits of political thought, would have been its utter annihilation.

What the consequences would have been.

The same traditions and conditions, the same historical antecedents, which prevented the masses of the people from realizing that it was *one* nation that had become independent, which made it impossible for them to look upon the Continental Congress as their government, which compelled them for the most part to regard any government outside of their state as a foreign government,—exerted almost equal force upon the members of the Continental Congress. The "saving grace of common sense," which is never entirely wanting in men of Anglo-

Characteristics of the political thought of the time.

* Woodrow Wilson's The State, 398.

Saxon blood, did indeed make it impossible for them to ignore completely the fact that if there was any sovereign body on this side of the Atlantic, it was the one American people. But in the minds of the men of the time the dim, half-unconscious perception of this truth existed side by side with the very vivid feeling that their state was their country, and that all power rightfully belonged to the individual states.

The actions of the Continental Congress a jumble of contradictions.

This is how it happened that the actions of the Continental Congress present, from the point of view of political science, such a jumble of contradictions. When the members of that Congress were looking towards England, when they were taking measures to free the country from Great Britain, they were guided by their feeling that sovereignty belonged to the American people; when they were looking at the states, their actions were determined by their feeling that the state from which each came was his true country. Compelled inexorably by the conditions which confronted them to exercise power as the representatives of the sovereign American people, they were compelled with equal inexorableness by all their habits of political thought to imagine that they exercised it as the delegates of sovereign states. Regarding themselves as mere agents of their respective states, and Congress as a sort of international body, it was impossible for them to act as a government when their actions directly affected the people of the states. To

have done more than ask the states to give effect to their resolutions, in such cases; to have taken unconditionally such action as seemed to them wise—to have levied taxes, for example, without leaving it to the discretion of the states to pay them; to have demanded troops without leaving the states to decide whether the troops demanded should be enlisted—would have been, from their point of view, for the subject to make laws for his sovereign, for the agent to enforce policies upon his principal.

The Articles of Confederation were merely the formulation of these contradictions in the political consciousness of the time. In bestowing upon Congress power to deal with other nations, to conduct all international correspondence, to make all treaties, to control the army and the navy, the Articles gave expression to the half-conscious feeling of the men who framed them that sovereignty resided in the American people; in withholding from Congress all power to compel the people of the states to do anything, in lodging all real power in the states, they gave expression to the more vivid and almost universal feeling that the state was the country of its citizens, and as such the only rightful possessor of power.

Articles of Confederation a formulation of the contradictions in the political consciousness of the time.

The Articles amounted to an attempt at squaring the political circle. The union between the states was to be more than a league, but in the most vital matters it was to be

The Articles an attempt to square the political circle.

less than a government. It was to be more than a league, since Congress was given authority to call upon the states for men and money at discretion, and the states were under constitutional obligations to furnish them. It was to be less than a government, since the states were left perfectly free to disregard their constitutional obligations if they chose.

It is hardly necessary to say that this monstrosity could have no existence outside of the confused ideas of the men who undertook to create it. Men can no more successfully do violence to the laws of political society than they can successfully defy the laws of physics. A state cannot grant political power and keep it at the same time. This axiom the framers of the Articles of Confederation were trying to evade. They were trying to make possible a central government created by the states and deriving all of its power from them without diminishing the powers of the states. The states were to give themselves a sovereign and invest him with certain powers, and at the same time they were to keep the powers they had given him. The sovereign was to have, in certain cases, supreme power to command; the states were o have, in the same cases, supreme power to decide whether they would obey: there was to be a sovereign central government over thirteen sovereign states.

Resulted in necessary failure.

There is nothing in the nature of things to prevent a political body from being a government from one point

of view and for certain purposes, and not a government from another point of view and for other purposes. Every government of limited powers is such a government; it has supreme power to do certain things and no power whatever to do certain other things. The remarkable thing about the Confederation is that its Congress was intended to be a government and not a government at the same time and from the same point of view. There was no reason why Congress might not have been a government for certain purposes, and destitute of all power for any other purposes. This, indeed, contrary to the theory of the Articles, is precisely what it became. The Articles strove against the nature of things in two directions: they tried to give power to one body without taking it from any other; they tried to create something out of nothing. They tried, also, to keep in the states powers which they never had, powers which, in the nature of the case, they could not have.

The meaning of the last statement will be clear if we bear in mind, first, that the government of the Confederation was intended to be a government of strictly delegated powers, those not delegated to remain with the states; and, secondly, that the power to make regulations for the territories of the United States was not given to Congress. The irresistible inference from these two propositions is that the power to pass laws governing the territories of the United States was left by the Articles

Congress of Confederation forced to assume powers.

of Confederation with the states: a power was left to them that had never belonged to them—a power which they could not have exercised without governmental chaos. To have left to the states the power to legislate for the territories would have been for thirteen governments to have the power to make laws for the same people in relation to the same subjects.

The reason for this absurd condition of things was that facts absolutely refused to adjust themselves to the conditions presumed by the Articles. The Articles were framed on the theory that all the territory of the United States was included in the territory of the several states. They could not have been framed on any other theory if the Confederation was a mere treaty of alliance between the states. But Maryland obstinately refused to adopt them unless that theory should be abandoned, unless the states should cede to Congress some of the territories which they claimed. Before Maryland adopted them, and hence before they could go into operation, it was clear that large cessions of territories would be made. By the time the Articles went into operation, therefore, the situation was radically different from what it had been supposed to be when they were framed. It was then clear that the United States, as one body, was to be the owner of a large domain, and that the only body that could govern it was Congress,—in spite of the fact that not a line of the Articles implied in the remotest manner its right to exercise any such power.

Confronted with such a situation, Congress was compelled to choose between exercising powers which the states had not even professed to delegate to it, and leaving the territories of the United States without any government whatever. The states were compelled to choose between accepting without question the acts of Congress in relation to those territories, and leaving them in a state of anarchy. Usurpation and anarchy were the alternatives before Congress; submission to usurpation, and anarchy, were the alternatives before the states. And so we have the remarkable spectacle of a body driven ignominiously from the seat of government by a mere handful of soldiers, a body humbly suing its masters for the means of prolonging its miserable existence, and suing in vain,—passing laws and making regulations in respect to our territories that no one ever thought of questioning. Strange that an act of an organization in the last gasp of existence should be so far-reaching in its consequences as the famous ordinance of 1787! The explanation in part is that in relation to the territories Congress was a government; but in relation to matters of vital importance to the well-being of the nation—the providing of a revenue, the raising of armies, the enforcement of treaties, the regulation of commerce, the enforcement of the obligations of contract—it was not a government, it was merely an advisory body.

In relation to the most important matters the Congress of the Confederation an advisory body.

The truth of this statement can be easily tested. If you wish to determine the extent to which an organization which claims to be a government really is what it claims to be, you can apply a simple and, at the same time, infallible test. Ask to what extent it can *do* things; to what extent its edicts *operate directly* on individuals. Applying this test, we see that Congress could not provide a revenue,—it could only ask the states for money; it could not raise an army,—it could only call upon the states for troops; it could not enforce treaties,—it could only request the states to enforce them. As to the regulation of commerce and the enforcement of the obligations of contract, the Articles of Confederation did not even attempt to confide them to the care of Congress. In reference to all these matters—matters of vital moment to the nation's well-being—the Congress of the Confederation was not a government.

Proof of this.

We have already noticed the explanation of the remarkable fact that the men of the Revolution tried to govern with a government to which they had given no adequate powers: *the people did not look upon themselves as a nation; they had not attained to national self-consciousness.* In a noble letter which Washington addressed to the governors of the states in June, 1783, he said that a willingness on the part of the people to sacrifice some of their local interests to the common good was essential to the very

Explanation of the character of Congress.

existence of the United States as a nation. But the people of the various states were not willing to make sacrifices for the common good; they did not regard themselves as citizens of a common country. The love of the union which seventy-five years later had become a passion hardly existed then. The federal government was the mere creature of convenience,—not the embodiment and home of a deep-seated idea. The object of no regard, the centre of no affections, the government of the Confederation was created with the central idea of making an abuse of power impossible. But the only way to make an abuse of power impossible is to grant no power to be abused. This is why the United States created a government and withheld from it powers of such vital importance. The result was that by 1787 it had become clear to all thoughtful men that the nation was confronted with these alternatives: it must give itself a government with adequate powers or sink, in the language of Washington, into wretched and contemptible fragments of empire. To create such a government was the work that called the Federalist party into existence.

Alternatives in 1787.

CHAPTER II.

ATTEMPTS TO PROVIDE A REVENUE.

WE shall better realize the causes that led to the organization of the Federalist party if we make clear to ourselves the particulars in which the lack of a government with adequate powers proved most embarrassing. One of these particulars, it is unnecessary to say, related to the raising of money. Money was necessary to the government. Whoever, therefore, was interested in the continued existence of the government felt the necessity of investing it with power to raise money. Whoever, also, was interested in having a government which could raise money was interested in the creation of a government of adequate powers.

Need of a government with power to raise money.

Another difficulty related to the making of commercial regulations. The lack of this power was not, indeed, due to the same cause as the lack of power to levy and collect taxes. In adopting the Articles of Confederation, the states solemnly promised to abide by the decisions of Congress in all the matters which those Articles committed to its control. The making of requisitions for money was one of those matters. The promise to grant those requisitions was made because no one was visionary

With power to make commercial regulations.

enough to suppose that the government could exist without money, to say nothing of performing the work expected of it. As the states were unwilling to give Congress any power, the only thing possible was the *promise* to exercise their power in raising money for the government whenever Congress requested it. But as the necessity of a uniform control of commerce was not equally evident, the states did not even promise, as we have seen, to pay any attention to the wishes of Congress in relation to commerce.

Another defect in the government was lack of power in Congress to prevent the states from passing laws which violated the obligations of contract. This power also was not even nominally vested in Congress by the Articles of Confederation. That the people of the states might choose to pass laws which struck at the very foundations of society, laws which tended to make the word 'contract' mean a mere promise on the part of the contracting parties to do the things specified in the contract,—not an obligation which the whole power of society was pledged to enforce,—laws, therefore, which created a universal feeling of uncertainty, in the states in which they were passed, as to whether the terms of a contract would be observed,—apparently had not occurred to the men who framed the Articles of Confederation. Hence it happened that the states were not even asked to promise that laws of this description should not be passed.

With power to enforce the obligations of contract.

These three, then—the inability of Congress to levy and collect taxes, to make commercial regulations, to prevent the states from stepping between the debtor and his creditor—were the defects which brought most vividly to the minds of large numbers of people the fact that they were without a government of adequate powers, and made them realize most forcibly the need of one.

The imperative necessity of vesting in Congress power to provide an adequate revenue very early attracted the attention of thoughtful men. On November 11, 1780, a convention of delegates from New York and the four New England states sent a circular letter to all of the states, in which they said: "Our embarrassments arise from a defect in the present government of the United States. All government supposes the power of coercion; this power, however, never did exist in the general government of the continent, or has never been exercised. Under these circumstances, the resources and force of the country can never be properly united and called forth." *

Convention of delegates from New York and New England.

The proceedings of this convention were referred in December to a committee of Congress, of which James Madison was a member. Madison's report submitted in March, 1781, made a very radical recommendation: "The Articles of Confederation, which declare that every state shall abide by the

A radical recommendation.

* Bancroft's History of the Constitution, I., 14.

determinations of Congress, imply a general power vested in Congress to enforce them and carry them into effect. The United States in Congress assembled, being desirous as far as possible to cement and invigorate the federal union, recommend to the legislature of every state to give authority to employ the force of the United States as well by sea as by land to compel the states to fulfil their federal engagements." *

Madison's report was referred to a grand committee, a committee of thirteen, consisting of one member from each state. By its advice, the matter was referred to a committee of three, Edmund Randolph of Virginia, Oliver Ellsworth of Connecticut, and James Varnum of Rhode Island. They were instructed to "prepare an exposition of the Confederation, to devise a plan for its complete execution, and to present supplemental articles."

On August 22, this committee of three made an elaborate report which advised: "That as America became a confederate republic to crush the present and future foes of her independence; as of this republic a general council is a necessary organ; and as, without the extension of its power, war may receive a fatal inclination and peace be exposed to daily convulsions,—it be resolved to recommend to the several states to authorize the United States in Congress to . . . distrain the property of a state delinquent in its assigned proportion of men and money."

* Madison's Papers, Gilpin's edition, I., 88–90.

That the states would grant such a power to Congress was out of the question. To suppose that delinquent states would grant to Congress power to compel them to pay their requisitions was absurd. But unless the absurd happened, what was to become of the government?

Congress asks for power to levy a duty.

On February 3, 1781, Congress made an attempt which seemed more likely to be successful. It passed a resolution urging upon the states the indispensable necessity of vesting in the federal government the power to levy a duty of five per cent on imports in order to pay the debts incurred in the Revolution, that power to cease when those debts were paid. This appeal to the states was based on the ground which was most likely to be effective. The waging of the war was a matter in which all of the states had felt a most vital interest; the debts incurred in prosecuting it had been beyond question incurred for the common good. It was, therefore, reasonable to suppose that the necessity of making provision for their payment would be apparent to every one. But this necessity seemed not to be apparent to Rhode Island. At any rate, that state refused to consent to the article. One of her reasons was that such a power would render Congress independent of its constituents, and would endanger the liberties of the United States!

Since the Articles of Confederation were framed on the theory that the states were independent and sover-

eign, that their confederation was a sort of league or treaty into which each state had voluntarily entered, little Rhode Island was able to put an absolute veto on the article. To add a new article was, on the prevailing theory, to modify the treaty, and a treaty cannot be modified without the consent of all the parties to it. Hence it happened that a state whose population consisted of about one sixtieth of the people of the country was able to prevent Congress from being clothed with a power which was rightly regarded as essential to the very existence of the government.

Rhode Island vetoes the article.

Two months later, the army took up the matter. The officers of the main army, stationed at Newburgh, sent to Philadelphia a committee consisting of three members "to state to the supreme power" (were they ironical?), their "head and sovereign," the distresses under which they labored. On January 6, 1783, this committee presented to Congress an address signed by the leading officers, in which, speaking in behalf of the army, they said: "We have borne all that men can bear. Our property is expended; our private resources are at an end. We therefore beg that a supply of money may be forwarded to the army as soon as possible. The uneasiness of the soldiers for want of pay is great and dangerous; further experiments on their patience may have fatal effects. . . . Whenever there has been a want of means . . . we have

Action of the army.

invariably been the sufferers by hunger and nakedness and languishing in a hospital." . . . [We entreat that] "Congress, to convince the army and the world that the independence of America shall not be placed on the ruin of any particular class of citizens, will point out a mode for immediate redress."*

Robert Morris confers with a committee of officers.

This memorial was referred to a committee which held a conference (January 7) with Robert Morris, the Superintendent of Finance. He told the committee peremptorily that in the state of the finances it was impossible to make any payment to the army. He warned the committee that he could not wisely make any promises with regard to future payments unless funds that could be relied on were established.†

Also with a committee of Congress.

A day or two later Morris told a committee of Congress appointed at his request that he had overdrawn his account in Europe to the amount of three million and a half livres, and that he had to choose between making further drafts on France, in the hope that her friendship for us would induce her to make them good, and wrecking the public service. The committee made a report recommending Congress to authorize Morris to draw such bills as the public service might require on the credit of loans yet to be made! One man alone, Dyer of Connecticut, opposed it as dishonorable. But when he was assured that

* Journals of Congress, IV., 206. † Gilpin, I., 248.

the alternatives before Congress were, on the one hand, committing our credit, our faith, and our honor to the mercy of a foreign nation, and on the other, risking our very existence, he acquiesced. *

In an interview with the grand committee the deputies were asked what steps they supposed the army would take if no pay whatever should be immediately advanced. They answered that it was impossible to say precisely; that there was good reason to dread at least a mutiny; that "the army was verging to that state which makes a wise man mad." †

Goaded into something like energy by the desperate situation, Congress again took up the question of making provision for revenue. On January 28, Madison moved that the establishment of permanent and adequate funds was "indispensably necessary" for doing complete justice to the creditors of the United States, for restoring public credit, and for providing for the future exigencies of the war. ‡

Madison moves the establishment of permanent funds.

The debate which continued with some interruptions for nearly three months was an interesting revelation of the state of public opinion. The idea that liberty would be endangered by any measure which made Congress to any extent independent of the states so completely filled

The debate.

*Gilpin, I., 250–251. †Ibid. 257. ‡Ibid. 289.

the horizon of some men that they could see nothing else. Hardly had Madison taken his seat when Rutledge objected, urging a reliance on the old method of requisitions, though it had been demonstrated, one would suppose with a degree of clearness which made doubt impossible, that the needs of the government could not be met in that way. Arthur Lee followed, saying that to place the purse and the sword in the same hands, as Madison's motion proposed, was subversive of the fundamental principles of liberty. Madison's reply was to the point. "The motion before Congress," he said, "contains a simple proposition with respect to the truth of which every member is called upon to give his opinion. . . . Is, then, a continental revenue indispensably necessary for doing complete justice to the creditors of the United States, for restoring public credit, and for the future exigencies of the war? This is the question."*

On February 21, Madison argued that Congress already had the right, under the Articles of Confederation, to determine the amount of revenue necessary for the government, and to call upon the states to pay it; and that this call was as binding upon the states as the laws passed by the states were binding upon their citizens. In reply, Arthur Lee repeated his objection to putting the purse and the sword in the same hands. (It is somewhat remarkable that no one called his attention

* Gilpin, I., 289–298.

to the fact that only in a very Pickwickian sense could it be said that the sword was in the hands of Congress.) As to the argument that unless Congress should be assured of the means of fulfilling its engagements it was nothing more than a rope of sand, Lee said he would be explicit: "He would rather see Congress a rope of sand than a rod of iron." Mercer of Virginia was even more emphatic. He said that if he believed that Congress had such power as Madison ascribed to it, he would immediately withdraw from it and do all in his power to destroy it. If Congress had such power, the liberties of the state were a mere name. Unless the states had a right to sit in judgment on the requisitions of Congress, and to do as they pleased about paying them, their liberties were gone. Gorham replied that if justice could not be obtained through the federal system, and if this system was to fail,—which would be the inevitable result,—it was time that this was known, "that some of the states might be forming other confederacies adequate to the purposes of their safety."*

Armstrong's appeal to the army.

After Congress had agreed to request the states to provide the federal government with a revenue, and while they were endeavoring to agree upon the details of a plan, it received from Washington the alarming intelligence that the army was in imminent danger of taking the matter into its own hands. Shortly after the return of the deputies

* Gilpin, I., 351-7.

of the officers from their bootless errand to Congress, Major John Armstrong, the aide-de-camp of Gates, had made an anonymous appeal to the army, urging them to demand the justice they had sued for in vain. "Have you not lately, in the meek language of humble petition, begged from the justice of Congress what you could no longer extort from favor? How have you been answered? . . . If this be your treatment while the swords you wear are necessary for the defence of America, what have you to expect when those very swords, the instruments and companions of your glory, are taken from your sides, and no marks of military distinction be left but your wants, infirmities, and scars? If you have sense enough to discover and spirit to oppose tyranny, whatever garb it may assume—whether it be the plain coat of republicanism or the splendid robe of royalty, . . . awake, attend to your situation and redress yourselves. . . . Change the milk-and-water style of your last memorial. . . . Tell Congress that the slightest mark of indignity from them now must operate like the grave and part you forever; that, in any political event, the army has its alternative. If peace, that nothing shall separate you from your arms but death; if war, that you will retire to some unsettled country, smile in your turn, and 'mock when their fear cometh on.' But tell them also that should they comply with the request of your late memorial, it would make you more happy and them more respectable." *

* Journals of Congress, IV., 209.

Washington felt most keenly the bitter injustice of the treatment which the army had received from Congress. But believing as he did that an attempt on its part to take its case into its own hands, to right its own wrongs, would lead to indescribable horrors, he resolved instantly to do what he could to "arrest the feet that stood wavering on the precipice of despair."* On March 12 he issued an order disapproving of the meeting proposed by the anonymous paper, and, at the same time, requested a meeting of the officers of the army on the following Saturday to hear the report of the committee which they had sent to Congress. When the appointed time came, he himself was there with an address in which, after analyzing the anonymous appeal and denouncing it as fit only to proceed from a British emissary, he said: "For myself, so far as is consistent with the great duty I owe to my country and those powers we are bound to respect, you may command my services to the utmost extent of my abilities. While I give you these assurances, let me entreat you, gentlemen, on your part, not to take any measures which, in the calm light of reason, will lessen the dignity and sully the glory you have maintained. . . . By thus determining and thus acting, you will pursue the plain and direct road to the attainment of your wishes. You will give one more proof of that unexampled patriotism and patient virtue, rising superior to the pressure of the

Washington meets the officers.

* Washington to Hamilton: Hamilton's Works (Hamilton's Edition), I., 344.

most complicated sufferings; and you will afford occasion for posterity to say: Had this day been wanting, the world had never seen the last stage of perfection which human nature is capable of attaining." * After reading his address, he read a part of a letter from a member of Congress to prove that Congress was willing to do what it could for the army, and then he left the meeting.

His noble appeal accomplished its purpose. The officers, many of whom had been ready to join in a movement to compel Congress to do them justice, unanimously voted that "the army continue to have an unshaken confidence in the justice of Congress and their country, and are fully convinced that the representatives of America will not disband the army until their accounts are liquidated, the balances accurately ascertained, and adequate funds established for payment." †

Vote of the officers.

On March 23, authentic news was received that a treaty of peace between the United States and England had been made. Washington at once wrote to a committee of Congress that, before disbanding the army, their universal expectation—that they would receive pay for at least one month in hand, with an absolute assurance of pay for at least two months more in a short time—should be realized. "The financier will take his own measures; but this sum must be procured. The soldier is willing to

Washington writes to a committee of Congress.

* Journals of Congress, IX., 213–15. † Ibid., 215.

risk the hard-earned remainder due him for four, five, perhaps six years upon the same basis of security as the general mass of other public creditors." * Morris told a committee of Congress that it was impossible to grant Washington's request—that three months' pay amounted to more than all of the receipts from all of the states since 1781. He said that nothing could be done except to give notes to the soldiers, in the hope that a revenue would be collected which would make the notes good. The army was finally paid for three months with notes worth from eight to ten per cent of their nominal value. In the language of Washington, the soldiers went home "without a settlement of their accounts and without a farthing in their pockets." †

Congress finally agreed upon the details of a revenue measure. The states were asked to grant to Congress the power to levy certain specific duties upon certain enumerated articles for the use of the United States, and a duty of five per cent *ad valorem* upon all other goods. In addition, the states were asked to establish for a term limited to twenty-five years "substantial and effectual revenues," to the amount of a million and a half of dollars, to be appropriated, like the preceding, to the payment of the debts incurred in carrying on the war. This, with the million of dollars which was hoped for from the duties, would enable Congress to pay the interest on its debt—

The revenue measure of 1783.

* Bancroft, I., 102.

† Washington to Congress, June 24, 1783. Sparks, VIII., 456.

which amounted to about two and a half million dollars. Congress expected that the sales of public lands would enable them gradually to pay the principal.

This measure was sent to the states in the spring of 1783, accompanied by every document which seemed calculated to influence the legislatures of the states.* One of these was an eloquent and earnest appeal to the states, written by Madison, setting forth the claims upon our gratitude of those to whom we owed money, to say nothing of honesty; another was a reply, written by Alexander Hamilton, to the excuses—they were called arguments—by which Rhode Island had sought to justify herself for refusing to consent to the revenue scheme proposed in 1781; another was the address which Washington read to his officers at Newburgh. No stone was left unturned by the committee to whom the matter was entrusted—Madison and Hamilton were two of its members—to induce the legislatures of the states to consent to the measure, since the very existence of the government seemed to depend on its fate.

Sent to the states.

By February, 1786, seven states had consented to the impost part of the scheme unconditionally; two to that part of the scheme on condition that all of the other states accept the entire system; two had consented to the scheme in all of its parts, while four had not consented to any part of it.

Responses of the states.

* Journals of Congress, IV., 194–215.

The situation was absolutely desperate. In the preceding fourteen months an average of less than four hundred thousand dollars a year had been paid in by the states—when the interest on the foreign debt alone amounted to more than half a million. Congress appointed a committee to make one more appeal to the states. The committee declared in the most solemn manner that a further reliance upon requisitions would not only be dishonorable to the understanding—it would be dangerous to the welfare and peace of the union. It was utterly impossible to maintain the faith of the government by temporary requisitions on the states, and absolutely essential for all of the states to accede to the revenue system of April, 1783.

Congress makes another appeal to the states.

This urgent appeal induced all of the states except New York to grant the impost asked for by Congress. That state obstinately refused, or rather qualified her consent with conditions which were equivalent to a refusal.*

New York's refusal.

The refusal of New York decided the fate of the Confederacy. It left to Congress no resource for paying its debts and providing for its current expenses except requisitions which had become a mere jest and by-word.† A government which has no power to raise

* New York provided that the impost should be paid in paper money to officers appointed by the state and amenable to it.

† "Requisitions are actually little better than a jest or by-word. If you tell the legislatures they have violated the treaty of peace and invaded the prerogatives of the Confederacy, they will laugh in your face."—Marshall's Life of Washington, II., 108.

money has no motive for keeping up the farce of pretending to be a government. The time was evidently near at hand when the Confederation would fall to pieces through sheer lack of power to hold the parts together, or when a real government would take the place of the monstrosity which the Articles of Confederation had undertaken to create. Which of these alternatives would have been realized if a sense of justice, if considerations of common honesty, if the obligations of good faith, had been the only motives for the creation of a government is hardly open to doubt. But these motives, fortunately, were reinforced by others which made a stronger appeal to a large number of men. By a succession of very vivid and impressive object lessons, the men of the time were compelled to realize the necessity of creating a government with power to regulate commerce and to enforce the obligations of contract. Without the influence of these motives, it seems tolerably safe to say that the government under which we live would have no place among the institutions of the world.

CHAPTER III.

THE NEED OF POWER TO REGULATE COMMERCE.

THE need of power to regulate commerce had attracted some attention before the close of the Revolutionary War. On June 25, 1778, New Jersey, through her delegates, presented a memorial to Congress in which she declared that the sole and exclusive right to regulate commerce should be vested in that body.* The memorial was not favorably received. On February 3, 1781—the very day that Congress asked the states for power to lay a duty of five per cent on imports—Witherspoon of New Jersey and Burke of North Carolina brought the same matter to the attention of Congress, but without any better success.† The passing of the motion to ask the states for power to levy duties, and the rejection of the motion to ask for power to regulate commerce, illustrate the state of public opinion on the two subjects.

Memorial of New Jersey in relation to commerce.

Until the independence of the United States was acknowledged, the inability of Congress to regulate commerce was not, indeed, a matter of much practical importance. But when this country was admitted to a place among the nations of the world, the necessity of power

* Elliott's Debates, I., 87. † Ibid., 92, 93.

to negotiate and enforce commercial treaties became vital.

It was the conduct of England which compelled Americans to realize this. At the close of the war there were a few Englishmen who were statesmanlike enough to see that if unrestricted trade had been profitable to England when the United States were colonies, it must prove to be profitable after the independence of this country had been acknowledged. The Chancellor of the Exchequer, the young orator, William Pitt, was of this way of thinking. In March, 1783, he introduced into the House of Commons a bill the object of which was to leave the trade between the two countries in much the same state in which it had been before the war. The bill provided that the ships and vessels of the United States, when laden with the produce or manufactures of their own country, might, as before the war, enter all the ports of Great Britain without paying any higher duties than those imposed upon British vessels. It also proposed to make the trade between this country and the British islands and colonies in America entirely free.

Policy of England in relation to the United States.

The measure received the support of that great statesman, Edmund Burke. "While there is an immense extent of unoccupied territory to attract the inhabitants [of the United States] to agriculture," he said, "they will not rival us in manufactures. . . . Do not treat them as aliens. Let all prohibitory acts be repealed, and

leave the Americans in every respect as they were before, in point of trade." *

Fortunately for the United States—in view of the ultimate consequences—more illiberal counsels prevailed. On July 2, an order in council was issued confining the trade between the United States and the British West Indies to ships built in Great Britain and owned and manned by British subjects. Fish and many important articles of American produce were prohibited from being carried to the West Indies even in British vessels.

"This order," John Adams wrote to Congress, "is issued in full confidence that the United States cannot agree to act as one nation." †

Adams's opinion was based in part on the debates in Parliament. In debating a proposition to permit American ships to take to Great Britain nothing but the produce of the particular states of which their owners were citizens, Lord Thurlow had said: "I have read an account which stated the government of America to be totally unsettled, and that each province seemed intent on establishing a distinct, independent and sovereign state." In a famous pamphlet on "The Commerce of the American States" Lord Sheffield said: "It will not be an easy matter to bring the American states to act as one nation. They are not to be feared as such by us. . . . The Act of Confederation does not enable Congress to

* Cobbett's Debates, XXIII., 613, 614.
† Diplomatic Correspondence, VII., 81.

form more than general treaties. . . . When treaties become necessary, they must be made with the states separately." *

The British government resolved to adopt the policy recommended by Lord Sheffield. On March 26, 1785, the Duke of Dorset, the English ambassador at Paris, in reply to a proposal by the American commissioners to enter upon the negotiation of a commercial treaty, said: "I have been instructed to learn from you what is the real nature of the powers with which you are invested—whether you are merely commissioned by Congress, or whether you have received separate powers from the respective states. The apparent determination of the respective states to regulate their own separate interests renders it absolutely necessary towards forming a permanent system of commerce that my court should be informed how far the commissioners can be duly authorized to enter into any engagement with Great Britain which it may not be in the power of any one of the states to render totally fruitless and inefficient." †

Meanwhile (April 30, 1784), in order that it might meet Great Britain's restrictions with counter-restrictions, Congress had asked the states for power to regulate commerce for fifteen years. The result was what might have been expected. In the spring of 1786, it was ascertained that three states had not granted the request in any form. The other ten

Congress asks for power to regulate commerce.

* The Commerce of the American States, 199, 200.

† Diplomatic Correspondence, II., 297.

had granted the power, but had attached to their grants such a jumble of conflicting conditions as to deprive their acts of all value.*

Attempt of the states to retaliate against England.

An attempt of some of the states to take the matter into their own hands showed in a still more glaring light the pitiable weakness of the Confederation. Massachusetts, New Hampshire and Rhode Island—upon whom the blow of the English orders had fallen with terrific force—having passed navigation acts which prohibited British ships from exporting anything from those states, and which imposed very heavy duties on all such products as they might import, Connecticut took advantage of the situation to make her trade with Great Britain entirely free.

Not satisfied with having warded off the blow which the other New England states had aimed at Great Britain, Connecticut laid a tax of five per cent on all goods imported from any other state—which amounted to a prohibition of trade—while New York levied duties upon both Connecticut and New Jersey.†

* Journals of Congress, XI., 46.

† From a speech made January 4, 1788, by Oliver Ellsworth in the Connecticut convention, which met to consider the ratification of the Constitution, we learn how heavy was the burden which New York was able to lay on Connecticut: "Our being tributary to our sister states," he said, "is a consequence of the want of a federal system. The state of New York raises $60,000 or $80,000 a year by impost. Connecticut consumes one third of the goods upon which this impost is laid, and consequently pays one third of this sum to New York. If we import by the medium of Massachusetts, she has an impost, and to her we pay a tribute."—Elliott's Debates, II., 189.

Few things are more remarkable in the history of this remarkable period than the fact that all these various demonstrations of the necessity of a government with power to pass laws which were absolutely essential to the very existence of the nation, still failed to carry conviction to some very able men. The debts of the government were falling due, and Congress had no means of paying them. Its one source of revenue, requisitions upon the states, had miserably and pitiably failed. England had struck us a terrible blow, and we had no means of retaliating or holding out inducements to secure better treatment. The states in whose hands lay the entire control of commerce, instead of using it to promote the common good, were engaged in a ruinous commercial warfare, each trying to build itself up on the ruin of its neighbors—and Congress was without power to prevent them. In the presence of such facts, one would suppose that the path to political salvation would have been as plain as a pikestaff. But the remarkable thing is that it was not. Rufus King, for example, a man of a very high order of ability, was so blinded by his prejudices in favor of state sovereignty as not to be able to see that there was only one thing to be done: give the country a government which could govern.

Under the severe discipline of the English orders, Massachusetts had been learning something. James Bowdoin was elected governor of that state in 1785. In

his first message to the legislature he declared that a convention of all the states ought to be called, and that this convention should vest in Congress all the powers necessary to preserve the union, to manage its general concerns and promote the common interest. "This matter," said the governor, "merits your particular attention. . . . If you think that Congress should be vested with ample powers, and that special delegates should be convened to settle and define them, you will take measures for a convention whose agreement, when confirmed by the states, would ascertain those powers."

Governor Bowdoin's message.

The two branches of the legislature replied, pledging their most earnest efforts "to establish the federal government on a firm basis, and to perfect the union." On the first day of July, they made their pledge good by uniting in the following resolution: "The present powers of the Congress of the United States as contained in the Articles of Confederation are not fully adequate to the great purposes they were originally designed to effect." They sent this resolution to the president of Congress, with a circular letter to be forwarded by him to the executive of each state. They also directed their delegates to take the earliest opportunity to lay them before Congress and "to make every exertion to carry the object of them into effect."

Response of the legislature.

Rufus King was one of the delegates from Massa-

chusetts. But he and his two colleagues, S. Holten and Elbridge Gerry, assumed the very great responsibility of disobeying their instructions. The letter in which they defended their action was written by Rufus King. He must have found it curious reading in after-years. "We are sensible," they said, "that our duty points out a prompt and exact compliance with the instructions of the legislature. But if a case arises wherein we discover most clearly consequences so fatal that, had they been known, perhaps the measure adopted would not have been proposed, it may not be improper to delay a final execution until we have the instructions of the legislature after such pernicious consequences shall have been submitted to their examination."

Action of the Massachusetts delegates in Congress. Their defence.

What were the consequences which were so pernicious in their character as to justify the delegates of Massachusetts in disobeying their instructions? One was that a convention would be illegal, since the Articles of Confederation made no provision for any such thing. The thirteenth article provided that no alteration in the articles should at any time be made unless it was first agreed to by Congress and afterwards confirmed by the legislature of every state.

Moreover, if a convention was to be called, its powers ought to be limited to a revision of the articles in clearly specified particulars. To call a convention to revise the articles generally, would produce throughout

the union an exertion of the friends of an aristocracy to send members who would promote a change of government. "'More power in Congress' has been the cry from all quarters, but especially of those whose views, not being confined to a government that will best promote the happiness of the people, are extended to one that will afford lucrative employments, civil and military. Such a government is an aristocracy which would require a standing army and a numerous train of pensioners and placemen to prop and support its exalted administration." *

Bowdoin's answer went to the root of the matter: "If there are in the union such discordant principles as to make it hazardous to intrust Congress with powers necessary to its well-being, the union cannot long subsist." Nevertheless, King's reasoning convinced the legislature of Massachusetts that it would be a mistake to call a convention.

Bowdoin's reply.

In the mean time, another series of events, set in motion by James Madison, was leading to the goal that Bowdoin had vainly tried to reach. Seeing clearly that there was no escape from commercial chaos save by giving Congress entire control over commercial matters, and seeing with equal clearness that such control would never be given by the separate action of the states, Madison prepared a

Madison prepares a motion for a convention of the states.

* Hamilton's History of the Republic, III., 139, 145.

motion for a convention of the states to take into consideration the whole subject of commerce, and "to report to the states such an act relative to this great object as, when unanimously ratified by them, will enable the states in Congress assembled effectually to provide for the same." Madison's zeal as a nationalist had made him an object of suspicion to the states' rights men, so he prevailed on one of their own party, John Tyler, to introduce his motion. But the tact of the distinguished Virginian availed him nothing; his motion was laid on the table.*

Maryland and Virginia had appointed commissioners to consider the regulation of the trade upon the Potomac and Pocomoke rivers. As those states were separated only by the Potomac River, neither could have a fixed commercial system unless both had the same, since each would be continually passing laws to counteract the effect of those passed by the other.

Meeting of commissioners from Maryland and Virginia.

The commissioners met in 1785. In the course of their discussions, they saw that it was desirable for the two states to have a uniform system, not only in relation to commerce, but in relation to currency. They accordingly recommended that each year the two states appoint commissioners to report upon the details of a system for the next year embracing both these matters.

In considering the proposed system, the Maryland legislature saw that Maryland was interested in having

* Elliott, V., 114.

Delaware and Pennsylvania agree with her upon a uniform commercial system. It saw, also, that these states, in turn, had neighbors with whom they were so closely connected as to make a uniform system between them and their neighbors desirable. The report adopted by the Maryland legislature therefore suggested that all of the states might well be invited to send commissioners to the conference.

Suggestion of the Maryland legislature.

The Maryland report gave Madison an opportunity to bring forward his motion for a general commercial convention; it was taken from the table and passed by a large majority on the very last day of the session of the Virginia legislature (January 21, 1786). The majority, Madison said, was so large because the legislature saw that it would have to adjourn "without any effort for the crisis in the affairs of the union," unless the motion passed.*

Madison's motion passes.

The place of meeting selected for the convention was Annapolis; the time, the following September. When the appointed time came, but twelve delegates were there, and these the representatives of five states only.† Small as their number was, the members of the Annapolis convention were too ardently devoted to the cause of good government to permit it to adjourn without doing anything. A committee was appointed to

But twelve delegates attend the Annapolis convention.

*Elliott, V., 114.

†New York, New Jersey, Pennsylvania, Delaware, and Virginia.

draw up an address to the states, urging them to meet in convention for the purpose of revising the Articles of Confederation. It was characteristic of Alexander Hamilton, the delegate from New York, that, although he was not a member of the committee, the address was written by him.*

Address adopted by the convention.

The address, as unanimously adopted by the convention, recommended the states to send delegates to a constitutional convention to be held in Philadelphia on the second Monday of the following May, "to take into consideration the situation of the trade of the United States; to devise such further provisions as shall appear to them necessary to render the federal government adequate to the exigencies of the union; and to report such an act for that purpose to the United States in Congress assembled as when agreed to by them, and afterwards confirmed by the legislature of every state, will effectually provide for the same." †

The plan of Hamilton and Madison.

One would like to know the details of the conversations between Hamilton and Madison which doubtless preceded the writing of that address. It was by no means the first time that they had worked together to secure larger powers for the national government. They had been members of the committee appointed by Congress to

* Hamilton's Works (Hamilton's Edition), II., 336-9.

† Elliott, I., 118.

answer the objections of Rhode Island to the five per cent duty asked for in 1781, and also of the committee appointed in 1783 to prepare an address to the states, urging them to accept the revenue scheme recommended by Congress in April of that year. The answer of the first committee had been written by Hamilton; the address of the other, by Madison. Having worked together so often in the cause of good government, it is impossible not to suppose that the address was part of a plan agreed upon between them after careful consideration.

It is easy to divine what the plan was. According to the address, the amendments to be proposed to the Articles of Confederation were first to be approved by Congress, and then ratified by the legislature of every individual state. Unless Congress approved, and unless the states ratified, the address implied that the proposed amendments were to fail. But did not both Hamilton and Madison know that the consent of every state could not be obtained to such amendments as the Articles of Confederation imperatively required? As early as 1780 Hamilton had seen not only the necessity of a much stronger government, but the impossibility of getting the states to consent to it. He had urged the calling of a convention with full authority to give adequate powers to Congress without the ratification of its work by the legislatures of the states. The experience of the preceding years had convinced him that such a government as

the one he had recommended in 1780 would not do, and had made him feel more strongly than ever that intelligent and wise action could not be expected of the states. Is it possible to suppose that Hamilton imagined that the consent of the legislature of every state could be obtained to such a government as he thought indispensable?

The kind of government which Madison advocated in the convention is a proof that though his ideas were less radical than Hamilton's, they were still far in advance of the public opinion of the time. Taking, therefore, all of the circumstances into account, it is hardly possible to doubt that the address was intended by Hamilton and Madison to accomplish objects which probably they did not dare avow even in that little company of twelve men. To have confessed, in so many words, that they aimed, not to revise the Articles of Confederation, but to make a new constitution from the ground up, that they wished to strike a fatal blow at the principle of state sovereignty, would have been to defeat their object at the start. The first move in the game, if it was to be won, was to get a convention of the states. But to have shown their hand at the outset would have made failure inevitable. To state in somewhat vague terms the object of the proposed convention, to declare that its work would be submitted for ratification to each individual state, was a concession to the situation which Hamilton and Madison were absolutely obliged to make.

If, by such means, the states could be induced to send delegates to the convention—especially if these delegates should consist of the most eminent men in the country,—they were hopeful that the states might be induced to approve its work, even if it was revolutionary in its character.

Madison was then a member of the legislature of Virginia. He exerted his influence to have that body take the first step towards making the proposed convention a reality. At the head of a delegation which contained the governor of the state—Edmund Randolph—George Mason, and Madison himself was placed George Washington—who was urged by Madison in repeated letters to accept the appointment,* and who finally consented. So far the Annapolis plan was working well: to get a convention of such eminent men that its authority would enable it to override the Articles of Confederation with comparative impunity.

Virginia takes the first step towards the federal convention.

*Madison's Works, I., 255, 263, 267.

CHAPTER IV.

ON THE VERGE OF ANARCHY.

THE recommendation of Congress to the states to appoint delegates to a convention, of course settled nothing. Whether any convention would have met, and, if so, whether anything would have come of it, if only the causes we have so far considered had been in operation, is mere matter of speculation. But there were other causes, causes which culminated in an event which seems to have changed the mind of such a stubborn states' rights man as Rufus King. In October, 1786, he made a speech before the legislature of Massachusetts in which he urged that body not to send delegates to the proposed convention, declaring that Congress was the proper body to propose alterations in the Confederation.* In the following February he wrote a letter to Elbridge Gerry saying that, although he still thought the convention was not legal, he was of the opinion that "we ought not to oppose but to coincide with it." "Events," he said, "are hurrying to a crisis; prudent and sagacious men should be ready to seize the most favorable circumstances to establish a more perfect and vigorous government."† What had happened in the preceding three

Rufus King argues against the convention.

King changes his mind.

* Life and Correspondence of Rufus King, I., 146. †Ibid., 202.

months to make Rufus King forget his fear of an aristocracy? In these three months he had been made to realize what the alternative to "aristocracy" really was; he had been made to see that unless the federal government should be invested with power adequate to its needs, there was imminent danger of the utter subversion of law and order—in one word, of anarchy.*

The reluctance to invest the federal government with adequate powers was by no means wholly due to the feeling that the state was the country of its citizens. It was due also to the fact that the people of the states had not learned the all-important truth: that the only liberty worth having is liberty under the rigid control of law, that liberty not under the control of law means anarchy. Deluded by names, as men are ever prone to be, many people supposed that, with liberty secured, all the evils from which they suffered would vanish. That was one reason why the states were so reluctant to give Congress the power to collect taxes. Unless the states were able to do as they pleased about paying the taxes asked for by Congress, they would not have unrestricted liberty.

Popular notion of liberty.

* There is no documentary evidence as to the cause of the change in King's mind. J. C. Hamilton (History of the Republic, III., 239) quotes his father, Alexander Hamilton, as having said: "I revolutionized his mind." Perhaps he contributed to it; but we may be permitted to doubt whether he would have succeeded if he had not received the powerful aid of the insurrection in Massachusetts.

Not to have this was to lose the benefit of all those semi-magical influences which were somehow supposed to be exerted by it, to say nothing of certain very palpable advantages soon to be enumerated.

It is in the nature of the case impossible for men to hold such opinions as these and have their actions affected by them in a single direction only. The legislatures which refused to give Congress the means of paying its debts, or granted them reluctantly, did so because they were ready in other directions to step between the debtor and his creditor. They were ready to cheat the creditors of Congress by refusing to pass the laws without which the debts of the country could not be paid; they were also ready to pass laws which would enable individuals to cheat their creditors.

That such a disposition prevailed in many of the states to a dangerous extent is proved beyond a doubt.

Depreciation of state debts.

Not only did the debts owed by the United States depreciate in the period we are considering, but the debts owed by the states. That the debts owed by Congress should have depreciated needs no explanation.

But how did it happen that the bonds of the states depreciated, and that in states which made an annual and adequate provision for their payment? The explanation is that the repudiating spirit was abroad, and every one knew it. Said John Marshall: "In many of those states which had repelled every attempt to introduce

into circulation a depreciated medium of commerce, or to defeat the annual provision of funds for the payment of the interest, the debt sunk in value to such a degree that those creditors who were induced by their necessities, or want of confidence in their rulers, to transfer their public securities, were compelled to submit to a loss of from ten to sixteen shillings in the pound! However unexceptionable might be the conduct of existing legislatures, the hazard from those which were to follow was too great to be encountered without an immense premium. In private transactions an astonishing degree of distrust also prevailed. The bonds of men whose competency to pay their debts was unquestionable could not be negotiated but at a discount of thirty, forty and fifty per cent. . . . Some of the causes which produced this calamitous state of things were permanent. The hope and fear still remained that the debtor party would obtain the victory at the elections; and instead of making the painful effort to obtain relief by industry and economy, many rested all their hopes on legislative interference. . . . In every quarter were found those who asserted it to be impossible for the people to pay their public and private debts; and in some instances threats were uttered of suspending the administration of justice by private violence." *

Another contemporary witness testifies to the same fact. In his introduction to the debates of the conven-

* Marshall's Life of Washington, V., 88, 89.

tion, Madison says: "In the internal administration of the states, a violation of contracts had become familiar, in the form of depreciated paper made a legal tender, of property substituted for money, of instalment laws and of the occlusion of the courts of justice." *

A letter from Christopher Gore to Rufus King, November 9, 1786, illustrates the effect of the repudiating spirit on confidence in the government of Massachusetts. "You well know," he says, "the poverty of the Massachusetts treasury, and the little confidence placed in government by men of property. But even these inconveniences may be remedied if only the government will show a disposition to be honest. . . . But a tender law, an act suspending all legal processes, is not only winked at, but even supported by some political wiseacres." †

The history of the time fully confirms the testimony of these witnesses. In spite, or perhaps because, of their experiences with the paper money of the Revolution, which depreciated until it was worthless, a strong paper-money party grew up in every state. The aims of this party were sometimes stated with brutal frankness. A letter was published in 1787 in the *New Haven Gazette* advising the people as to the persons to be selected for the General Assembly: "Choose . . . men of simplicity, not men of shrewdness and learning; choose men that

Paper-money party.

* Elliot's Debates, V., 120.

† Life and Correspondence of Rufus King, I., 195.

are somewhat in debt themselves, that they may not be too strenuous in having laws made or executed for collection of debts ; nothing puts a poor, honest man so much out of ready money as being sued, and sheriffs after him. Choose such men as will make a bank of paper money, big enough to pay all our debts, which will sink itself (that will make so much clear gain to the state)." *

This paper-money party carried the day in seven states (Rhode Island, New York, New Jersey, Pennsylvania, North Carolina, South Carolina, and Virginia), and in four others it was a powerful minority. This makes it easy to understand why the states paid so little attention to the requisition of Congress, and why they were so reluctant to give it power to impose duties. Both effects were due to a common cause: a disposition to evade the payment of debts public and private.

The same cause produced other effects of a kindred character. Wherever the debtor party was in power, laws were passed affording facilities for the payment of debts or suspending their collection, as well as for the manufacture of paper money.

The debtor party in New Hampshire.

In New Hampshire, the influence of the debtor class induced the legislature, in 1785, to pass a law making every sort of property a legal tender at an appraised value. But this only increased the distress which it was intended to allevi-

* Quoted by Libby, Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution, 58.

ate. Credit could not be had when debts were to be paid in such a medium of exchange. This led to the calling of a convention which urged the government to issue paper money. While the legislature was considering this request, a body of insurgents assembled at the seat of government and demanded immediate compliance with the request of the convention. When the president of the state, General Sullivan, undertook to expose the absurdity of their demands, he was interrupted with loud cries of "paper money," "an equal distribution of property," "the annihilation of debts," "a release of taxes."* The insurrection was suppressed without difficulty, but it not only signified the real nature of the demand for paper money—it showed the tendency towards anarchy.

Shays' insurrection.

It was the conduct of the debtor class in Massachusetts which gave the most dramatic illustration of the powerful drift towards anarchy. The burden of debt was particularly heavy in that state, and taxes were oppressively high. At a time when business was almost at a standstill, about $1,200,000 a year was collected from the people in direct taxes. Having failed to induce the legislature of Massachusetts to go into the manufacture of paper money, the debtor party resolved to have recourse to other methods. They attempted to accomplish by rebellion what they had vainly hoped to accomplish under

*J. C. Hamilton's History of the Republic, III., 156.

the forms of law. As the party of repudiation could induce the legislature neither to make easy the payment of their debts by the manufacture of paper money, nor to pass laws in any way interfering with the obligations of contract, they resolved to prevent the courts from sitting, and in that way to keep their creditors from collecting debts due. In the fall and winter of 1786, they surrounded the court-houses in seven different counties, and in a number of instances prevented a session of the courts. By December of that year, under the leadership of Daniel Shays, they had put an army of fifteen hundred men in the field, and had it not been for the energy and decision of the governor, Bowdoin, the results of the rebellion might have been very serious. We have the authority of a contemporary observer for saying that at one time there was a doubt whether more than half of the people of the state did not sympathize with the movement.*

The spirit behind the rebellion is clearly brought out by a speech made by Day, one of the leaders of the insurrection. "My boys," he said to his men, "you are going to fight for liberty. If you wish to know what liberty is, I will tell you. It is for every man to do what he pleases, to make other folks do as you please to have them, and to keep folks from serving the devil."†

The rebellion in Massachusetts was the occasion of one more illustration of the utter impotence of Congress. Before the Congress of 1786 adjourned in October of

† Holland's Western Massachusetts, I., 296.

* Rives's Madison, II., 174.

that year, the news of the insurrection in Massachusetts compelled it to decide whether it would overstep the boundaries marked out for it by the Articles of Confederation, and attempt to go to the assistance of Massachusetts, or whether it would passively allow events to take their course. According to the theory of state sovereignty, to which the Articles of Confederation attempted to give expression, it was the duty of each state to suppress insurrections among its inhabitants. But when Congress had to choose between usurpation and anarchy, it did not hesitate: it voted to request the states to raise troops, although it did not dare say for what purpose the troops were to be used, but pretended that they were wanted to protect Western settlers against the Indians.

Consequent action of Congress.

The Congress which should have assembled in November, 1786, was without a quorum until February 2, 1787. Then at last Rufus King showed that, encased as his mind seems to have been in the armor of the state-sovereignty dogma, it was possible for facts to penetrate it.

When (February 19) Pinckney moved to stop the enlistment of troops since there was reason to suppose the "insurrection in Massachusetts, the real though not the ostensible object of the measure, to be crushed, and since it would be absurd to proceed in the raising of men who could neither be paid, clothed, nor fed," King, hitherto the doughty champion of the strict

construction of the Articles of Confederation, made a "moving appeal to the feelings of Congress. He reminded that body that the real object in voting the troops was to countenance the exertions of the government of Massachusetts; that the silent co-operation of these military preparations under the orders of Congress had had a great and double effect in animating the government and awing the insurgents. . . . He particularly and pathetically entreated Congress to consider that it was in agitation . . . not only to bring to due punishment the more active and leading offenders, but to disarm and disfranchise for a limited time the great body of them. . . . He dwelt much upon the sympathy which would probably be excited in behalf of the stigmatized party; scarcely one of them was without a father, a brother, a friend among the masses of the people. Under these circumstances a new crisis, more solemn than the late one, might be brought on. He believed, therefore, that stopping the federal enlistments might have the double effect of alarming the friends and encouraging the enemies, of the government of Massachusetts, and might rekindle the insurrection. He said that every state in the union was exposed to the danger of being visited with similar calamities, and declared that in such an event they would all sue for the support of Congress."*

Rufus King's speech.

*Gilpin's Madison, II., 581, 582.

Pinckney's motion was rejected, and two days later (February 20, 1787) Congress took up a report which had been brought in by a committee composed of one member from each state. That report (it had been adopted by a majority of one vote only) coincided with the report adopted by the Annapolis convention,—that the Articles of Confederation needed amending, and that a convention was the best means of amending them. After considerable discussion, every state except Connecticut voted for a resolution recommending the states to appoint delegates to a convention to meet in Philadelphia on the second Monday of the following May for the "sole and express purpose of revising the Articles of Confederation."

Congress recommends the convention.

But though the resolution received a vote so nearly unanimous, very few of the men who voted for it believed that the convention would confine itself to amendment of the Articles of Confederation. The opinion was general, says Madison—at that time a member of Congress—that the resolution would prove a deadly blow to the Confederation. What the members of Congress really hoped would be the outcome of the crisis, Madison says it was difficult to tell. The Southern members seemed anxious for some sort of republican government which would preserve the union and, at the same time, give due energy to the federal government. The New England members were suspected of desiring some anti-republi-

Opinion of Congress as to its outcome.

can establishment, "the effect of their late confusion."* One man alone, Bingham of Pennsylvania, avowed the wish that the Confederation might be split up into several distinct parts.

On one point, however, there was entire unanimity. "All agreed that the federal government . . . could not last long."†

*Gilpin's Madison, II., 583. †Ibid.

CHAPTER V.

REVOLUTION OR DISSOLUTION?

SHAYS' rebellion and New York's final refusal (February 15, 1787) to consent to the revenue scheme of 1783 promoted the plan agreed upon by Hamilton and Madison at the Annapolis convention. These events made the friends of order and good government feel more strongly than ever that a supreme effort should be made to rescue the affairs of the country from confusion and anarchy.

Character of the members of the convention.

The result was an assembly, at Philadelphia, of delegates, fifty-five in number, composed of a remarkably large proportion of extraordinary men. Otto, the French minister, said they were equal in talent, knowledge, and patriotism to any assembly which had ever gathered in Europe.* That was not too much to say of a body of men which included Washington, Franklin, Hamilton, Madison, Rufus King, Gouverneur and Robert Morris, George Mason, Oliver Ellsworth, to say nothing of Roger Sherman, Caleb Strong, Elbridge Gerry, C. C. Pinckney, James Wilson, Edmund Randolph, Rutledge, and many others hardly, if at all, inferior to these in ability. Jefferson called it an "assembly of demigods." If any

* Otto to Vergennes, April 10, 1787. Quoted by Bancroft, History of the Constitution, Vol. II., 417.

body of Americans could disregard its instructions with impunity, and set aside the Articles of Confederation, it was this.

The day fixed for opening the convention was May 14. But not until the 25th of the month did the arrival of the delegates from New Jersey make a quorum of seven states. The interval was well spent by the delegation from Virginia. Madison had been making careful preparation for the work which was to give him the proud title of "Father of the Constitution." He had gone to Philadelphia with definite ideas as to the sort of constitution which ought to take the place of the Articles of Confederation. During those ten days the Virginia delegation spent two or three hours a day in considering Madison's plan.* When the New Jersey delegates arrived, the delegates from Virginia were able to present it, modified in some details, as the plan of Virginia.

Virginia delegates consider Madison's plan.

The day before the organization of the convention, Washington, in conversation with the delegates, made a very impressive speech. We know how he felt from his correspondence: that all of the hopes of the nation were staked on the convention; that if it adjourned without accomplishing anything, or if the result of its labors were rejected by the people, there would be an end of all federal government. With this feeling of the tremendous issues involved, he said:

Washington's speech.

* Bancroft's History of the Constitution, II., 5.

"It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If, to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and honest can repair; the event is in the hands of God." *

The convention was organized May 25, and Washington was chosen president. On May 29, Edmund Randolph, who, as governor of Virginia, was regarded as the official head of the Virginia delegation, introduced the main business of the convention by presenting the Virginia plan.† On the question most vital to the work of the convention—whether the Articles of Confederation were to be merely revised, or whether a new constitution from the ground up was to be made—Randolph's speech showed that the Virginia delegates had made up their minds. Any changes in the Articles which could fairly be called a revision of them had to leave their basal principle untouched. That principle was the principle of state sovereignty. It was in deference to this principle that the Articles provided that each state was to have a single vote, that the laws of Congress affecting the citizens of the states should be executed by those states, and that changes in the Articles, in order to be valid, must receive the assent of every state. To propose a

The Virginia plan.

* Oration of Gouverneur Morris on the death of Washington, 21, 22.

† Elliott, I., 143–5.

constitution which provided that some states should have more power in the government than others, was to say that the states were not on a footing of perfect equality, was to lay the axe at the root of the dogma of state sovereignty. To propose a constitution which provided that the federal government should execute its own laws upon the citizens of the states whether their legislatures approved them or not, was to make the dogma of state sovereignty ridiculous. What sort of sovereignty would that be which could not protect the citizens of the state from the operation of laws enacted by an outside, and therefore foreign, government? But the same iron necessity which had so often laughed at the theories of the Confederation left to the convention no choice, and the Virginia delegates knew it. The situation required them to choose between a government which could execute its own laws, and the monstrosity of the Confederation, which, in matters vital to the nation's well-being, was no government at all; between giving to states power in proportion to their importance, and continuing to give Delaware and Rhode Island as much power as Massachusetts and Virginia; between making a constitution to go into effect when adopted by some number of states less than the whole, and permitting little Rhode Island —which was the only state that had appointed no delegates to the convention—to veto the entire scheme.

We know from Madison's correspondence that he went to Philadelphia with clearly defined ideas on all of

these points.* But the Virginia plan, as presented by Randolph, dealt with the first two only. It declared that the right of suffrage in the national legislature ought to be proportioned "to the quotas of contribution or to the number of free inhabitants," and that a government ought to be established with power to execute its own laws.

Virginia plan revolutionary.

The proposal of Virginia was revolutionary, and the members of the convention knew it. Patterson of New Jersey said: "We ought to keep to our limits, or we shall be charged with usurpation. . . . We have no power to go beyond the federal scheme. A confederacy supposes sovereignty in the members comprising it, and sovereignty supposes equality. . . . There is no more reason why a great individual state, contributing much, should have more votes than a small one, contributing little, than that a rich individual citizen should have more votes than an indigent one. . . . New Jersey will never confederate on the plan before the convention; she would be swallowed up." †

The friends of a strong government acknowledged in substance the truth of Patterson's contention. Gouverneur Morris said it was too late to raise the question of legality—that the convention itself was illegal. He said that the American people were the supreme authority, and that a majority of them could alter the

* Works, I., 285, 286. † Gilpin, II., 832–4.

federal compact precisely as the majority of the people of a state could change their state constitution. Randolph did not attempt to defend the legality of the Virginia plan. He said: "When the salvation of the republic is at stake it would be treason to our trust not to propose what we find necessary."

Patterson, in behalf of the small states, proposed a plan based on the Articles of Confederation. Congress was to consist of one house, and each state was to have a single vote. There was to be an executive council chosen by Congress, and there was to be a federal judiciary. Congress was to have power to regulate foreign and domestic commerce, to levy duties on imports, and lay internal taxes.* Patterson's plan.

The radical defect of this plan was identical with that of the Confederation. It gave the small states power out of all proportion to their importance; it put the recommendations of the convention at the mercy of every individual state; and, worst of all, in matters absolutely vital to the well-being of the nation it made no provision by which Congress could deal with individuals. Congress might pass laws for the regulation of commerce; it might levy duties upon imports and impose internal taxes; it might make treaties. But the states could do as they pleased about executing its laws, collecting its taxes, and requiring their citizens to observe its treaties. Patterson's plan did indeed pro-

* Elliott's Debates, V., 191.

pose that the federal executive should be authorized to "call forth the power of the confederated states whenever it might be necessary to enforce the laws and treaties of the federal government." But what was this more than the old promise of the states to furnish men and money when Congress asked for them? Congress might call, but the states could do as they pleased about obeying. A government according to Patterson's plan would still be "government by supplication."

While the delegates from the small states could not controvert this, they, in turn, planted themselves on an equally undeniable fact: that the Virginia plan was revolutionary, and that it put the small states at the mercy of the large states. "If the Confederacy is radically wrong," said Patterson, "let us return to our states and obtain large powers, not assume them ourselves. . . . Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to propose." He read that article in the Confederation which declares that no change should be made in the Confederation which did not receive the assent of every state, and said: "This is the nature of all treaties; what is unanimously done cannot be undone." *

Convention in a deadlock.

The convention was in a deadlock; it seemed impossible to proceed. The delegates of the small states admitted that it was not just to allow Virginia, which was sixteen times as large

* Gilpin, II., 869.

as Delaware, an equal vote only. But they contended that it would not be safe for Delaware to allow Virginia to have sixteen times as many votes. The only expedient, however, which they were able to propose was the utterly impracticable one of throwing all the states into one mass and dividing it into thirteen equal parts.

On June 19, seven states, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia, voted for the Virginia plan, and three states, New York, New Jersey, and Delaware, for the plan of New Jersey. (The delegates from Maryland were divided, and those from New Hampshire had not then reached the convention.)

But this vote settled nothing. The delegates from the states which voted in the negative abated not a jot of their determination to prevent the framing of a constitution which put their states at the mercy of the large states. Luther Martin, one of the delegates from Maryland, was especially strenuous in this determination. On June 27, he declared that the Virginia plan was a system of slavery for ten states; "that as Virginia, Massachusetts, and Pennsylvania have forty-two ninetieths of the votes, they can do as they please without a miraculous union of the other ten. They will have nothing to do but to gain over one of the ten to make them complete masters of the rest." *

* Elliott's Debates, V., 249.

Two days later, Doctor Johnson of Connecticut—which state had reluctantly voted for the Virginia plan as the less of two evils—proposed a plan which became famous as the Connecticut compromise.* The small states insisted that each state should have the same amount of power; the large states, that the states should have power in proportion to their wealth or population. Let us compromise the matter, said Doctor Johnson. Let us provide for a legislature of two houses in one of which the people are to be represented, and in the other the states.

Connecticut compromise.

The delegates from the large states were emphatic in their opposition. On June 30, Wilson said that if the minority of the people of America refused to coalesce with the majority on just and proper principles he was willing to abide by the result; if a separation must take place, it could never take place on better grounds.† Rufus King went further: he said he was prepared for any event, rather than sit down under a government founded on a vicious principle of representation.‡ Bedford of Delaware answered threat with threat. The little states were willing to meet the large ones on no ground but that of the Confederation, he said. "We have been told with a dictatorial air that this is the last moment for a fair trial in favor of a good government. It will be the last

Delegates from the large states oppose it.

*Elliott's Debates, V., 255.

† Madison's Journal of the Convention, Scott's Edition, 272.

‡Ibid., 280.

indeed if the propositions reported by the committee [the Virginia plan] go forth to the people. I am under no apprehensions. The large states dare not dissolve the Confederacy. If they do, the small ones will find some foreign ally who will take them by the hand."* When the question came to a vote (July 2), a delegate from one of the large states, Abraham Baldwin of Georgia, voted with the small states and thereby divided the vote of one of the national states.† Convention decides in favor of it.

That vote practically settled the question. Every one knew that if New Hampshire and Rhode Island had been represented, their votes would have been cast for the Connecticut compromise. When the matter was finally settled, only three of the national states voted against it, North Carolina voting with the small states, and the vote of Massachusetts being divided by the vote of Caleb Strong and Elbridge Gerry. The reasons which Gerry and Strong gave for their vote are instructive. Said Gerry (July 5): "If the convention does not agree upon a compromise, a secession will take place and some foreign sword will do the work."‡ And Strong (July 14): "It is agreed on all hands that Congress is nearly at an end. If no accommodation takes place the Union

*Madison's Journal, 282.

†The six national states were Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, and Georgia—the first three being then the most populous, and the last three expecting large populations on account of their size.

‡Elliott's Debates, V., 297.

must soon be dissolved."* To prevent a dissolution of the Union, Strong and Gerry prevented the vote of Massachusetts from being cast against the compromise, which gave all of the states the same number of votes in the Senate.

*Elliott's Debates, V., 351.

CHAPTER VI.

THE REVOLUTION OF 1787.

THE convention had been in session nearly two months—from May 24 to July 16—before the first real step towards the accomplishment of its work was taken. The compromise between the large and the small states was the foundation of the constitution, and until the members of the convention agreed upon this their agreement upon details amounted to nothing. After the rights of the small states were secured, their delegates—so Madison told Bancroft, and the records prove it—exceeded all others in zeal for granting powers to the general government.* Patterson became a stanch Federalist, and remained one to the end of his life.

But the antagonism of interests between the slave and the free states was just as fundamental as that between the large and the small states. "The members of the convention," said Baldwin afterwards in a speech in the House of Representatives (February 12, 1790), long held in recollection "the pain and the difficulty which the subject of slavery caused in that body": slavery "had well-nigh led Southern states to break" up the convention "without coming to any determination."†

Antagonism between the slave and the free states.

*Bancroft's History of the Constitution, II., 88.

†Annals of Congress, 1790, 1200.

This antagonism appeared in the convention in connection with two questions: First, to what extent should slaves be counted in determining the number of representatives to which a state was to be entitled? Secondly, should the states be permitted to do as they pleased about importing slaves?

These questions, like the question at issue between the large and the small states, were answered not by the logic of principle, but by the logic of facts. Gouverneur Morris denounced slavery in an unanswerable speech.

Gouverneur Morris on slavery.

"Slavery is a nefarious institution," he said. "It is the curse of Heaven on the states where it prevails. Upon what principle is it that slaves shall be computed in the representation? Are they men? Then make them citizens and let them vote. Are they property? Why, then, is no other property included? The admission of slaves into the representation, when fairly explained, comes to this, that the inhabitant of Georgia and South Carolina who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections and damns them to the most cruel bondage, shall have more votes in a government instituted for protection of the rights of mankind than the citizen of Pennsylvania or New Jersey, who views with a laudable horror so nefarious a practice. He would sooner submit himself to a tax for paying for all the negroes of the United States than saddle posterity with

such a constitution." * That was the logic of principle.

But the task set the convention was not to make an ideal constitution for an ideal people, but to make a constitution for the real people of the thirteen states which they would accept. To make a good constitution which they would not accept was to leave them without any, and that meant anarchy. That was "the logic of facts," and it was that to which Rutledge of South Carolina gave expression when he said: "Religion and humanity have nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is whether the Southern states shall or shall not be parties to the Union." † That was emphatically the question when provisions concerning slavery were under consideration. The convention therefore agreed that five slaves should count as three citizens in determining the number of representatives to which a state was to be entitled.

Problem before the convention.

Rutledge on slavery.

This was a compromise between the North and the South; but a compromise on the subject of the slave trade was a bargain between the New England commercial states and the Carolinas and Georgia. The New England states wished Congress empowered to pass navigation acts by a simple majority. They had realized the ruinous results of allowing the states to regulate commerce But

Compromise between commercial states and three southernmost states.

* Gilpin, III., 1263. † Ibid., 1389.

the Southern states were unwilling that Congress should have power to pass navigation acts, at any rate by nothing more than a simple majority. They were afraid that the commercial states would get control of their carrying trade, and charge exorbitant freights on their rice, indigo, and tobacco. Three of them, also, were determined not to relinquish the slave trade. Rutledge said: "If the convention thinks that North Carolina, South Carolina, and Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those states will never be such fools as to give up so important an interest." The New England states, accordingly, made a concession to the three southernmost states, without which it is reasonably certain the constitution would never have been adopted, and they, in turn, made a concession to the commercial states. They agreed that Congress should have power to regulate commerce by a simple majority, and the commercial states agreed that the slave trade should not be prohibited for twenty years.

The demand of the South for a provision in the constitution for the return of fugitive slaves was granted without much objection. No political interest was involved; and as to the moral question, it is probable that the delegates from the Northern states saw much more clearly the fact that without such a provision Southern slaveholders would be deprived of their property than they saw the other fact, that the constitution

with such a provision would deprive fugitive slaves of a natural right to freedom.

Mr. James Brice calls attention to several remarkable omissions in the constitution. The constitution contains no specific grant of power to the national government to coerce a rebellious state; it says nothing as to the right of a state to secede. These omissions are significant. The convention framed a constitution by the adoption of which thirteen peoples, imagining themselves still independent and sovereign, really acknowledged themselves to be but parts of a single political whole. But they made this acknowledgment unconsciously. They continued to think of themselves as sovereigns who indeed permitted an agent to exercise some of their functions for them, but who had not abdicated their thrones. If the constitution had contained a definite statement of the actual fact; if it had said that to adopt it was to acknowledge the sovereignty of the one American people, no part of which could sever its connections from the rest without the consent of the whole, it would probably have been rejected by every state in the Union. These omissions we may call a compromise between state sovereignty and nationalism.

Compromise between nationalism and state sovereignty.

Without these compromises the constitution would not have been adopted. But it is important to note that all of them except the first— which gave all the states the same power in the Senate—proved to be denationalizing forces. The

Denationalizing tendencies of these compromises.

adoption of the constitution gave to the United States a government, substituted for the powerless jabbering Congress of the Confederation a government with power to enforce its laws and compel its citizens to observe its treaties. It gave to the unity of the American people, which under the Confederation had been a mere idea, an objective existence among the institutions of the world. It touched every citizen in the land, and tended to make him feel that the American government was *his* government, tended to make the idea of patriotism reach beyond the boundaries of the state, and to give it a really national significance. But these compromises tended to perpetuate that feeling of separateness and isolation, that state selfishness or state patriotism, the prevalence of which made the period between 1783 and 1787 a dangerously critical period in American history. Separately, these compromises would have been comparatively harmless. But, working together, they seriously threatened the existence of the Union in 1820, 1833, and 1850, while in 1861 they plunged the country into one of the most terrible civil wars known to history. That civil war was the price which the American people paid for the lack of national patriotism in 1787. With national patriotism enough to have had at heart the highest ultimate good of the whole American people, the convention would have framed, and the states would have adopted, a constitution without these compromises. But the actual alternatives were a constitution with these

denationalizing elements, or anarchy. The work which national patriotism might have done peacefully and without loss in 1787, was done at a terrible cost in the Civil War. The constitution which was intended to be the great national charter of a free people is no longer disfigured by clauses recognizing slavery. The three slavery clauses were blotted out of it by the blood of the men who fell in that terrible struggle. It is still silent as to secession and state sovereignty. But, in the lurid light of the Civil War, that silence is no longer misinterpreted. All men now admit that, practically if not theoretically, when the people of the thirteen states adopted the constitution of 1787, they acknowledged the unity and sovereignty of the one American people.

The attention of the convention was early directed to the radical defect of the Confederation—inability to execute its laws. To remedy this defect, the Virginia plan, as introduced by Randolph, proposed to give to Congress the power to veto all unconstitutional laws passed by the states, and all laws conflicting with treaties made in accordance with the constitution, and to compel by force any state to do its duty as defined in the constitution.

Proposal to give Congress power to veto unconstitutional laws of the states.

The power to veto unconstitutional laws was at first agreed to by the convention without dissent. Indeed, even this did not go far enough to satisfy some of its members. Charles Cotesworth Pinckney moved that authority be given to the national legislature to negative

all state laws which it should judge to be improper. Radical as this motion was, it was seconded by Madison, and advocated by some of the ablest men in the convention. It received, however, the votes of only three states —Virginia, Massachusetts, and Pennsylvania.

But upon maturer reflection the convention decided that the states could be kept from violating the constitution and treaties and laws of the United States by means less offensive to the people. It decided to incorporate a clause providing that the constitution and the laws and treaties made in accordance with it should be "the supreme law of the land," and that the judges in every state should be bound thereby, "anything in the constitution or laws of any state to the contrary notwithstanding."

The substance of this clause was introduced by Patterson in the plan which was intended to leave the principle of the Confederation untouched. In itself it was nothing but a repetition of the "promise" made by the states in the Articles of Confederation to "abide by the determinations of the United States in Congress assembled." Under the government of the Confederation the promise had been of no value, for the Confederation had no power to compel the states to keep it. But the creation of a national executive and judiciary made this clause in the constitution mean exactly what it said. The constitution provided that the judicial power should extend to all cases in law and equity arising under it, or

the laws and treaties made in accordance with it. When, therefore, Congress or the legislature of a state passes a law which any citizen considers an encroachment upon his rights as guaranteed by the constitution, he can refuse to obey it on the ground that it is unconstitutional. The case so arising comes before the federal courts, and if they in the last resort declare the act unconstitutional, it is null and void so far as the particular case before them is concerned.

Convention opposed to representative democracy.

While the members of the convention were divided on most of the questions which came before them, there was one on which they were a unit. If there was a man among them who believed in what we may call representative democracy, he was discreetly silent. * So far as the Confederation had been a government at all, it had been of this type. The members of the Congress of the Confederation were supposed to be the mere creatures and mouthpieces of the states which they represented. But the government which all parties in the convention favored was of a very different character. The members of the convention wished to apply the same principle in government that men apply in business. When a man has business to transact which requires special knowledge he relies on the judgment of a specialist. The convention wished to frame a constitution which would recog-

* See Political Science Quarterly, 1896, for a clear statement of the difference between democracy as a form of government, as a form of the state, and as a form of society.

nize the wisdom of this practice, a constitution which would assume that as it requires less knowledge of law to select a good lawyer than it does to practise law successfully, so it requires less knowledge to select men capable of formulating policies of government than it does to formulate those policies.

On this point, men like Madison, who, excepting Jefferson, had more to do with organizing the Republican (Democratic) party than any other man, and Elbridge Gerry, Democratic Vice-President in Madison's second term, and Dickinson, afterwards a prominent Republican (Democrat) in Delaware, and George Mason, whose devotion to state sovereignty was so strong that he would not sign the constitution and opposed it in the Virginia convention with all his might, were in perfect accord with Alexander Hamilton. In discussing the fourth resolution of the Virginia plan—"that the members of the first branch of the national legislature ought to be elected by the people of the several states"—Elbridge Gerry said: "The evils we experience flow from the excess of democracy." Said George Mason: "We have been too democratic." Said Edmund Randolph: "Every one admits that the evils under which the United States labor have their origin in the turbulence and follies of democracy." Said Roger Sherman: "The people should have as little to do as may be about the government. They want information and are constantly liable to be misled."

So undemocratic was the convention that there were many who opposed the election of the House of Representatives by the people. Elbridge Gerry was emphatic in his opposition. "The people do not want virtue, but are the dupes of pretended patriots." Said General Pinckney: "An election of either [branch of Congress] by the people, scattered as they are in many states, is totally impracticable. I differ from gentlemen who think that a choice by the people would be a better guard against bad measures than by the legislatures. A majority of the people in South Carolina were notoriously for paper money as a legal tender; the legislature had refused to make it a legal tender. The reason was that the latter had some sense of character, and were restrained by that consideration."

In speaking of the Senate (June 26), Madison said: "Democratic communities may be unsteady, and be lead to action by the impulse of the moment. . . . In England at this day, if elections were open to all classes of people, the property of landed proprietors would be insecure."* He contended, therefore, that the Senate should hold office for nine years, that it might serve as a barrier against democracy.

The government which the convention wished to provide for was a republic, not a representative democracy. It wished to provide for a government in which

* Yates in Elliott, I., 450, 451.

the power of the people would be exhausted in choosing some of the men who were to administer it and who were to execute its laws. Of course it wished to have a government "that should rest on the solid foundation of the people." But the idea that the people should elect all of the officers of the government, representatives, senators, executive, members of the Supreme Court; still more, that the officers of the government should be guided by anything but the constitution and their own judgment, was entirely foreign to the views of the convention. In 1789, after the constitution had gone into effect, and the question of amendments to it was being discussed, one was offered asserting an express right in the people to instruct their representatives. It is safe to say that such a proposition would have found no favor in the convention.

We shall see more clearly the real nature of the government which the convention intended to create if we look at the constitution in the light of proposals strongly advocated by some of its members. Some of them wanted the power of the people limited to the election of the members of the state legislatures; the state legislatures to choose members of the lower house of Congress; the lower house, the Senate; and the two houses, the executive. So universal was the distrust of a democracy that the wish to refine popular appointments by successive filtrations (this remark was made by Madison) was unanimous, the only difference arising

as to the extent to which this process of filtration should be carried. We know that in fact the constitution which the convention finally made did limit the direct power of the people to the election of members of the House of Representatives and presidential electors, although, through what we may call the democratization of the government, the people now practically elect the President, and exert an increasingly strong influence over the election of senators.

When the question finally came before the Convention as to the number of states which should be necessary to ratify the constitution in order that it might go into effect, there was another attempt to make a show of homage to the poor, despised state-sovereignty dogma. A motion was offered that the constitution should not go into effect until it had been ratified by every state in the Union. But the convention refused to put its work at the mercy of a single state. Said Pierce Butler of South Carolina: "My mind revolts at the idea that one or two states may restrain the rest from consulting their safety." James Wilson put the action of the convention on its true ground: "We must in this case go to the original powers of society. The house on fire must be extinguished without a scrupulous regard to ordinary rights.*"

Number of states necessary to ratify the constitution.

This appeal to the original powers of society

* Gilpin, III., 140.

acknowledged in society an authority which could justify the convention in disregarding the Articles of Confederation, and amounted to saying that the American people was one not merely geographically but politically, that this was the sovereign whose word was law, and whose dispensing power was absolute.

In view of Madison's subsequent history, it is interesting to note how squarely he accepted this principle. He made a motion that the constitution should go into effect when it had been adopted by a majority of the people and of the states.* All of the states except Maryland finally agreed that it should go into effect in the states adopting it when it had been adopted by nine states.

Revolutionary action of the convention.

That vote left nothing wanting to complete the change from a government supposed to be based on the theory of state sovereignty to a government in which that theory was completely disregarded. The states that adopted the constitution abandoned their claim to independence and sovereignty; agreed to permit an outside power to enter their territories, and compel their citizens to do its will; gave up their claim to equality in the general government: and the states that refused to adopt the constitution—provided it had been adopted by nine states—were, without their consent, to have their so-called government, the government of the Confederation, utterly destroyed.

* Madison's Journal, 642.

To offer such a constitution to the states was to propose not merely a radical and fundamental change in the government, it was to propose a revolution.

If the convention had *first* resolved that any mere revision of the Articles of Confederation would fail to meet the case, that a government must be provided having direct relations with the people of the states, and that the necessities of the situation left no alternative but to say that a constitution providing for such a government should go into effect when it had been adopted by some number less than the whole of the states—if the convention had first resolved on this, and then had applied in a legal way to their masters, the people of the various states, for authority to make such a constitution, and if this authority had been granted, their action in framing such a constitution would have been constitutional, as that of the states would have been in adopting it. However profound the change which the constitution they made might provide for, it would not have been a revolution, because it would have been a change in accordance with the constitution. The Congress of the Confederation had a right to recommend that the legislatures of the various states should authorize their delegates to make such a constitution, and their legislatures had a right to authorize it. If Congress had so recommended and the states had, by new instructions, so authorized, the convention even in transforming the

character of the government would then have been acting in accordance with the Articles of Confederation.

But when, without such instructions, the convention disregarded the Articles of Confederation, its action was revolutionary, and every state that adopted the constitution sanctioned its action and became a party to it. Every such state admitted that the theory of the Confederation, that the states were independent and sovereign, was false. For, according to the new constitution, the states were not equal. In the house of representatives the states were to be represented in proportion to their population, and in voting for president their power was to be in nearly the same ratio. The government called into being by the new constitution did not, like the Congress of the Confederation, stop at the sacred boundary-lines of the states. It boldly crossed the Rubicon; it entered the territory of the states and was declared by the constitution, within certain limits, and for certain purposes, to be the supreme authority there. Most decisive of all, every state that voted for the constitution declared that, in a matter of fundamental importance, a certain majority could act for the whole. Nine states, said the constitution (and every state that voted for it said the same thing), could destroy the government of the entire thirteen. If, in a matter of such moment, a certain majority could act for the whole, why not in any matter? Before the adoption of the constitution, the states might put on the airs of sovereignty

without making themselves ridiculous. But when they had adopted it, they tacitly confessed that the crowns of which they had boasted were but the creations of ambitious dreams, for they themselves had acknowledged the supremacy of the real sovereign.*

* See Burgess' Political Science, Vol. I., Chapter II., pp. 98–108.

It may not be undesirable to repeat that this admission was not only tacit but, for the most part, unconscious—which amounts to saying that, in the various particulars mentioned in the text, the work of the convention could be justified only on the assumption that there was one sovereign in this country, the American people—not thirteen—but that this assumption was not consciously made by the vast majority of even the friends of the constitution. Most of the friends of the constitution looked upon the new government as they had done upon the Congress of the Confederation—as the creature and agent of the states. The constitution was framed by delegates voting as states; it was adopted by state conventions; it provided for an election of senators by the legislatures of the states. These features—not to mention others—made it easy for those who had been in the habit of regarding their state as sovereign to continue so to regard it after the creation of a government whose powers and nature were entirely inconsistent with any such supposition.

CHAPTER VII.

THE ANTIFEDERAL PARTY.

THE meeting of the federal convention was the first substantial success which was achieved by the friends of order and good government, or, as we may now term them, the Federalists. Would the constitution which they had made meet the same fate as their various attempts to increase the power of the Congress of the Confederation? This was the question which at once became the subject of eager debate when, about the middle of September, the constitution was published in the papers of Philadelphia.

Framing of the constitution the first success of the Federalists.

The programme of the Antifederalists was almost purely negative. Like the Irishman who was "agin the government," they were opposed to the constitution, and that was the only plank in their platform.

Programme of the Antifederalists.

We must be careful not to confuse them with the Republicans, or Democrats, who began to exist as a party about 1791. The questions at issue between the two parties in 1791 were entirely different from the single question which divided the Federalists and the Antifederalists in 1787. Shall the constitution be adopted?—that was the one question at issue in 1787. But the questions that divided the Fed-

Antifederalists and Republicans

eralists and the Republicans in the administrations of Washington and Adams related to matters of finance and foreign affairs, and the proper interpretation of the constitution. Indeed, many eminent men, among them Jefferson, Madison, Edmund Randolph, John Rutledge, and John Dickinson, were Federalists in 1787 and Republicans in 1791. They were Federalists when to be a Federalist meant to believe in the adoption of the constitution; they were Republicans when to be a Federalist meant to believe in Hamilton's financial policy and in an interpretation of the constitution which tended, they thought, to the undue centralization of the government. (Hamilton's financial policy will hereafter be explained in detail. At this point it is sufficient to say that this policy aimed to put the credit of the country on a sound basis by making such provision for the payment of the nation's debts as would be satisfactory to the creditors of the United States, and at the same time give them a direct personal interest in supporting the government.)

We may divide the Antifederalists into three great classes. The first class was composed of men of the type of Richard Henry Lee, Luther Martin, George Mason, and Rawlin Lowndes. Feeling intensely that their state was their country, and governed rather by feeling than by intellect, these men could not endure the thought that their state should submit to a government external and therefore foreign

Three classes of Antifederalists.

to them. "What gave the convention the right to say we the people, instead of we the states?" asked Patrick Henry.* Seeing in the Confederation a form of government in which the states were independent and sovereign, in which they submitted to no compulsion, these Antifederalists forgot its terrible defects, and lauded it as the most perfect government in the world. Jefferson, who, be it remembered, was not an Antifederalist, said that to compare the government of the Confederation with the governments of the countries on the continent of Europe was like comparing heaven with hell. Jefferson was in France when he said that. His mind was haunted by the thought of the suffering peasants of France, doomed by despotism to a life of unrequited toil. His countrymen were free; and to be free seemed to him, in the presence of the victims of French despotism, the perfection of political blessedness. He forgot, and so did Antifederalists like Richard Henry Lee, that the only liberty possible to men is liberty protected by law; that liberty unprotected by law is nothing but anarchy, and that anarchy inevitably results in tyranny.

Those who feared the constitution would overthrow the state governments.

Antifederalists of this class objected to the constitution because they were afraid that the government which it provided for would abuse its powers, and the history of the Confederation had shown that the only

* Elliott, III., 22.

way to make an abuse of power impossible is to grant no power to be abused.

The second class opposed the constitution primarily because of pecuniary considerations. The paper-money epidemic that spread over the country has already been noticed. That delusion bade fair to take the country by storm in 1786. It captured the legislatures of seven states outright, and in four others intrenched itself in such strong minorities as to leave those who were able to think straight in mortal terror of the results of the next election. Naturally every advocate of paper money in the country opposed the constitution, because the constitution forbade any state to make anything but gold and silver a legal tender for the payment of debt.

Those who opposed the constitution for pecuniary reasons.

Many others had pecuniary reasons for opposing the constitution. When the Revolutionary War broke out, large sums of money, especially in the South, were due to British subjects. Under the government of the Confederation, no power outside of the state could compel payment, whatever treaties might be made. But the new constitution provided that itself, and laws and treaties made in accordance with it, should be the supreme law of the land. And the treaty made with Great Britain, at the close of the Revolution, provided for the payment of the debts due to English citizens.

The debtor classes in general tended instinctively to oppose the constitution. We have seen that under the

government of the Confederation, whenever they got control of the state, they passed laws remitting taxes, affording facilities for the payment of debts, or suspending collection, as well as for the manufacture of paper money. The party that opposed repudiation, that insisted on the payment of debts public and private, always wished to strengthen the powers of the central government, while the debtor classes as invariably opposed it. Oliver Ellsworth of Connecticut said in the convention: "The prevailing wish of the people of the Eastern [New England] states is to get rid of the public debt, and the idea of strengthening the national government carries with it that of strengthening the public debt." Before the constitution was framed, therefore, the material was ready for the organization of the two parties—the one to secure and the other to prevent its adoption. It was not this or that provision in it which especially aroused the antagonism of the majority of those who opposed it. Its fundamental vice in their eyes was that it intended to create a government which would put an end to that license of the Confederation which was so rapidly degenerating into anarchy.*

* A gentleman in Boston wrote Madison early in 1788 that all the men in Massachusetts who were in favor of paper money and tender laws, all the late insurgents and their abettors, were opposed to the constitution. Knox wrote Washington to the same effect: "The third party are the insurgents, or their favorers, the great majority of whom are for an annihilation of debts public and private." Hamilton (Works, I., 401, Lodge's Edition), in enumerating the causes of opposition to the constitution,

There was a third class, small in number, but very influential, whose primary motive in opposing the constitution was ambition. Demagogues like George Clinton of New York, with no end in view but the advancement of their own personal interests, opposed the constitution because, like Cæsar, they preferred being first in their own state to being second in any other government. Anything, therefore, that tended to diminish the importance of their state tended to diminish the importance of the stage upon which they hoped to act a conspicuous part.

Those who opposed it through ambition.

These various classes made the Antifederalists a very formidable party. For a considerable time the friends of the constitution were in grave doubt whether

mentions "the disinclination of the people to taxes, and, of course, to a strong government; the opposition of all men much in debt, who will not wish to see a government established one object of which is to restrain the means of cheating creditors."

These opinions are fully substantiated by Mr. Orin Grant Libby in a monograph on The Geographical Distribution of the Vote of the Thirteen States on the Federal Constitution. He shows that the "Shays stronghold" in Massachusetts in 1786 was the "Antifederal stronghold" in 1788; and in general, wherever we find agitation for paper money, for discrimination in favor of debtors,—before the meeting of the convention, we find opposition to the adoption of the constitution. His monograph is worthy of careful study, although it unduly minimizes the causes of opposition to the constitution which were not pecuniary in their character. Albert Gallatin, James Monroe, and Patrick Henry opposed the constitution. But it would be altogether erroneous to attribute their opposition to pecuniary causes. They were representatives of the class who believed it wiser to risk the possibilities of anarchy than to incur the hazard of tyranny.

its enemies would not succeed in preventing its adoption in Massachusetts, New York, Virginia, Rhode Island, and North Carolina. That the Antifederalists failed to do it was probably due to the effect produced by Shays' insurrection. That outbreak created a profound impression on the people of the entire country. It gave them an unpleasant feeling of insecurity. Like the flash of lightning which enables the belated traveller to see that he is walking on the brink of a precipice, it burned into the minds of thoughtful men the fact that they were on the very verge of anarchy. Notwithstanding this, Massachusetts, which had been the theatre of the insurrection, and which had suffered terribly from the inability of the Confederation to regulate commerce, ratified the constitution by a majority of only nineteen out of a total of three hundred and fifty-five votes. And small as the majority was, it was obtained only through the exercise of great tact on the part of the Federalists. The convention was induced to ratify the constitution only when its friends agreed to accompany the ratification by urgent recommendations of amendments by means of which the liberties of the people were to be more effectually secured.

Effect of Shays' rebellion.

The constitution in Massachusetts.

In New York the constitution was ratified only through the exertion of the transcendent abilities of Alexander Hamilton. When the convention met, he

found himself the leader of a minority of nineteen against a majority of forty-five. "Two thirds of the convention and four sevenths of the people are against us," he wrote. But he was indeed, as Jefferson afterwards termed him, "the Colossus of the Federalists." He did not fully approve the constitution. He rightly said that in the federal convention no man's ideas had been more remote from the plan than his own. But believing that now the alternatives were anarchy and convulsion on the one hand, and a chance of good on the other, he advocated its adoption with all the energy of which his ardent nature was capable. "With an eloquence," says Mr. John Fiske, "scarcely equalled before or since until Webster's voice was heard," Hamilton argued week after week, until at last the leader of the Antifederalists, Melancthon Smith, declared that he was convinced of the merits of the constitution, and that he intended to vote for it. When the decisive vote was taken, there was a majority of three for the constitution out of a total of fifty-seven. Small as the majority was, the Federalists had to pay a dangerously high price for it. They were forced to agree that a circular letter be sent to all the states recommending another federal convention to consider amendments to the constitution.

In New York.

In Virginia the result seemed more doubtful than in any other state except New York. The abilities of the two parties in the convention were about equal. On

the one side there were James Madison, Edmund Randolph, John Marshall, and George Wythe; on the other there were Richard Henry Lee, William Grayson, George Mason, and, most formidable of all, the great orator of the Revolution, Patrick Henry. The Federalists, however, had the aid of the overshadowing influence of Washington. That probably decided the result. On the final test, out of a total of one hundred and sixty-eight votes the constitution received a majority of ten. A change of ten votes in Massachusetts, two in New York, and six in Virginia would have prevented the adoption of the constitution in those states. What the final outcome would have been in such an event it is impossible even to conjecture. This much, at least, it seems safe to say: had any one of those states rejected the constitution, it would almost certainly have been rejected by more than four states.

In Virginia.

In North Carolina the constitution was rejected by a large majority, and in Rhode Island no convention was called to consider it.

After the constitution had been adopted by eleven states, the Antifederalists attempted to get another federal convention called, in harmony with the recommendation of the convention in New York. If there had been systematic, concerted action in this direction, it seems impossible to doubt that they would have succeeded. The powerful minorities in Massachusetts, New York, and Virginia,

The Antifederalists after the adoption of the constitution.

to say nothing of other states, combined with the majorities in Rhode Island and North Carolina, could certainly have effected this. But the antagonism of the party to national ideas, the emphasis which it laid upon the idea of the state as the country of its citizens, seems to have been an obstacle in the way of concerted action between the leaders of the party in different states.

When, in 1789, the attempt to secure another federal convention failed, the Antifederalists ceased to exist as a party. That large numbers of them remained hostile to the new government is altogether probable. But their leaders seem for the most part to have taken the patriotic stand announced by Patrick Henry in the Virginia convention. "If I shall be in the minority," he said, "I shall have those painful sensations which arise from a conviction of being overpowered in a good cause. Yet I will be a peaceable citizen. My head, my hand, my heart shall be free to retrieve the loss of liberty and remove the defects of the system in a constitutional way. I wish not to go to violence, but will wait with hopes that the spirit which predominated in the Revolution is not yet gone, nor the cause of those who are attached to the Revolution yet lost. I shall, therefore, patiently wait in expectation of seeing this government so changed as to be compatible with the safety, liberty, and happiness of the people." * It is pleasant to be able to say that in a few years Patrick Henry came to see that the cause of

*Elliott, III., 652.

those who were attached to the Revolution was not lost when the constitution was adopted—that it was not necessary to change the constitution in order to have a government compatible with the safety, liberty, and happiness of the people.

CHAPTER VIII.

ALEXANDER HAMILTON.

WITH the adoption of the constitution the first chapter in the history of the Federalists closed. But the men who fought its first battle to a victorious conclusion did not, like the Anti-federalists, lay down their arms after the conflict. They consisted, indeed, of very different classes, and they had been influenced by very different motives. Among them were the commercial classes, chiefly from New England, who wished to have the constitution adopted because it proposed to create a government with power to regulate commerce, and because it prohibited the states from making anything but gold and silver a legal tender for the payment of debts. There were also the creditor classes, who had seen with dismay the tendencies of the states to repudiate all debts public and private, and who hoped that a government with power to collect taxes would pay its debts, and check the repudiating propensities of the states. There were the planters of the South, who looked to the new system to put an end to the financial depression from which they, in common with all the owners of property in the country, had suffered. There was also a class deserving of special mention, because of the influence which it exerted on the future of the party: the class that had been most

Classes of which the Federal party was composed when the constitution was adopted.

reluctant to separate from Great Britain—some of its members, perhaps, had never been willing that the country should declare itself independent, but had pretended to be, in order to save their estates from confiscation—the class that consisted of ardent admirers of the British form of government, men with very little sympathy for a republican government, and less confidence in its stability.* Last, but not least in importance, there was the small class of men whose hatred of anarchy made them, like Hamilton, regard a nation without a national

*"The federal convention was the work of the commercial people in the seaport towns, of the planters of the slave-holding states, of the officers of the Revolutionary army, and the property-holders everywhere. And these parties could never have been strong enough of themselves to procure the general adoption of the instrument which they matured, had it not been that the open insurrection in Massachusetts, and the assemblages threatening to shut up the courts of justice in other states, had thrown the intermediate body of quiet citizens of every shade of opinion in panic all on their side. It was under the effect of this panic that the delegates had been elected, and that they acted. . . . Among the Federalists . . . were to be found a large body of the patriots of the Revolution, and a great number of the substantial citizens along the line of the seaboard towns and populous regions. . . . But these could never have succeeded in effecting the establishment of the constitution had they not received the active and steady co-operation of all that was left in America of attachment to the mother country, as well as of the moneyed interest, which ever turns to strong government, as surely as the needle to the pole."—John Adams' Works, Vol. I., pp. 441–443.

Callender expressed the same opinion as to the influence of Shays' rebellion when he said that the constitution "was crammed down the gullet of America."—Prospect before the United States, 10.

government as an awful spectacle; the class whose national patriotism made them want a home for their feeling of nationality. These were the components of the Federal party when it won its first victory. Could they stand side by side when its next battle was to be fought?

The second great question which the Federalists attempted to answer was: "Shall the financial policy recommended by Alexander Hamilton be adopted?" Before this question came before the country, the Federalists had accomplished work of great importance under the new constitution. They had organized the government, having provided for a secretary of state, a secretary of the treasury, a secretary of war, and for an attorney-general, and these offices were filled by Thomas Jefferson, Alexander Hamilton, Henry Knox, and Edmund Randolph respectively. They had provided temporarily for the pressing needs of the treasury by imposing a duty on imports. They had put through Congress twelve amendments, ten of which were duly ratified and incorporated into the constitution.* Most

* Tucker of South Carolina offered an amendment affirming the right of the people to "instruct their representatives." The discussion showed that the statesmen of the time clearly understood the difference between a republic and a democracy. "The clause," said Stone of Maryland, "would change the government entirely. Instead of being a government founded upon representation, it would be a democracy." Said Madison: "Suppose he [the representative] is instructed to patronize certain measures, and from circumstances known to him, but not to his constituents, he is convinced they will endanger the

important of all, they had passed a Judiciary Act, one section of which provided that in all cases where the powers of the general government were called in question and the decision was unfavorable to it, an appeal might be taken from the courts of the state to those of the United States, thus making the courts of the general government the ultimate judges of its powers, and depriving the states of all power of effective resistance. This act enabled the "sleeping giant" of the constitution, the Supreme Court, to bring into play all of its powers—put into its hands a weapon which enabled it to build upon the bare foundations laid in 1787 a fabric in which the implications of sovereignty as inherent in the one American people became living realities.

Judiciary Act.

But though the discussion of these measures, and the votes upon their passage, showed wide differences of opinion, there was not the kind of opposition to them which was necessary to make them party questions; the opponents of them had not organized into a party for the accomplishment of definite ends. When it is said that these measures were passed by the Federalists, no more is meant than that the majorities in favor of them were composed for the most part of those who had been

public good, is he bound to sacrifice his judgment to them? Is he absolutely bound to perform what he is instructed to do? . . . My idea of the sovereignty of the people is that they can change the constitution if they please; but, while the constitution exists, they must conform themselves to its dictates."—Annals of Congress, 1789–91, 733–739.

elected to Congress as friends of the constitution. For until Hamilton submitted his financial policy to Congress, a dead issue was the only test of Federalism. Up to that time, to be a Federalist meant to prefer the constitution to the Articles of Confederation. But when men had made up their minds as to Hamilton's financial policy, Federalism acquired a new meaning; it meant to be a believer in this financial policy, and to be a follower of Alexander Hamilton. And the significant thing to note is that some of the men who now led in the opposition to Federalism in the second period of its history had been ardent Federalists before. Why was this? Why was it that those who had agreed when the question was the adoption of the constitution were unable to agree when the question was the adoption of this financial policy? Why was it that they not only disagreed, but, as we shall see, disagreed so radically that each party felt that the other was an enemy of the country? To understand this, we must make some attempt to understand the political philosophy of Alexander Hamilton.

Second period in the history of the Federalists.

The life of this remarkable man reads almost like a romance. Intellectually, we may almost say he never had a boyhood. At seventeen we find him writing anonymous pamphlets of such ability that they were attributed to the most eminent men in New York; at twenty-three, in the midst of the occupations and diversions of the camp, he found time

Summary of Hamilton's life.

to write a profound letter on the financial affairs of the Confederacy; at twenty-five he traced with such accuracy the defects of the miserable government of the Confederation that scarcely anything remained to be added, and sketched an outline of a constitution bearing a remarkable resemblance to the one adopted seven years later; at twenty-six he was a member of Congress; at thirty, of the federal convention; at thirty-two, Secretary of the Treasury; and from then until his untimely death at the early age of forty-seven he was the life and soul of the Federal party.

We get a vivid idea of his wonderful ability when we notice how constantly Washington turned to him for advice, not merely while it was his official duty, as Secretary of the Treasury, to give it, but when he had ceased to be a member of the cabinet. Scarcely any subject of importance presented itself to Washington after Hamilton had left his cabinet that he did not call upon Hamilton for counsel. Would Hamilton give him his opinion of Jay's treaty? Would he suggest the subjects he thought the President should treat of in his speech to the two Houses of Congress? Would he examine the draft of the President's Farewell Address, and submit such changes and additions as seemed to him desirable? These are samples of the requests which this remarkable judge of men was constantly making of Hamilton.

His influence upon Washington.

The two men, indeed, were almost perfectly fitted to work together. Each supplemented the defects of the other. Washington's mind worked slowly, but his conclusions once reached were remarkable for their soundness. Hamilton's mind was marvellously quick, but his judgment was in danger of being carried away by the ardor of his temperament and the strength of his preconceptions. Washington was by no means remarkable for originality. His great power was displayed, not in creating new ideas and expedients, but in determining their value when originated by others. Hamilton, with the possible exception of his great antagonist, Thomas Jefferson, was the most original political genius, the most fertile in ideas and expedients, the country has produced. In their temperaments, also, as well as in their intellectual character, Washington and Hamilton were almost perfectly adapted to work together successfully. Upon a temper less firm than Washington's, Hamilton's ardor might have exercised undue influence; but upon the self-poised character of Washington it spent its force as vainly as the waves of the Mediterranean upon the rocks of Gibraltar.

This young man of thirty went to the federal convention with sharply defined opinions, not only as to the disease from which the country was suffering, but as to the appropriate remedy. He had seen the Revolutionary War needlessly prolonged because the states would not furnish Congress with the

Hamilton's fear of anarchy.

means of prosecuting it with vigor; he had seen the states deny the means of paying its debts, and refuse to pass the laws which were necessary to carry its treaties into effect; he had seen them refuse to grant to Congress the power to regulate commerce, although the necessity of investing Congress with such power was clear to the point of demonstration; he had seen the states pass laws which struck at the very root of civilized society; he had marked their paper-money laws, their laws remitting taxes,—their readiness to act as though the possession of liberty did away with the necessity of observing the principles which all the experience of the world had shown to be the condition of individual and national well-being. The result of it all was a profound conviction in the mind of this young man that the great danger threatening American society was anarchy. It was the strength of the anarchical elements of American society that had prostrated the credit of the country, that had treated its obligations as things of no worth, that had put a premium on shiftlessness and dishonesty by stepping between the debtor and his creditor,—that had even withheld from the government of the nation the means of keeping itself alive.

Hamilton's great speech in the convention.

What was to be done about it? From Hamilton's point of view, the answer, in part at least, was self-evident: Deprive the anarchical elements of society of all power to do harm; keep the bulk of political power in the hands of those whose self-interest would lead them to exert it for the general

good. In a great speech, five hours long, in the federal convention, he argued that the constitution should make provision for a Senate, whose members were to hold office for life or during good behavior, and be chosen by electors who were themselves to be chosen by voters with a property qualification. He wanted the President to be still further removed from the people. The executive was to be selected by a double set of electors chosen in turn by voters with a property qualification, and was to hold office for life or during good behavior. Despite the extremely conservative make-up of Hamilton's proposed Senate, he wished the President to have the power of absolute veto.

How he proposed to have the Senate and President elected.

But Hamilton was too well acquainted with human nature to suppose that the interests of the masses could be safely entrusted to the tender mercies of representatives of the property-owning classes alone. He therefore proposed that the House of Representatives should be chosen by universal, free, manhood suffrage, that it should have the power of originating all money bills, and that its members should hold office for three years. Such were the elements of the legislative and executive branches of the government which Hamilton wished to create.

House of Representatives; its powers; how elected.

Hamilton's reasons for proposing that his Senators should hold office for life or during good behavior, while

his Representatives were to serve but for three years, are in the highest degree instructive. He wanted a body which would have firmness enough to form a permanent barrier against the torrent of anarchical principles with which he felt sure it would be assailed. Those who supposed that a Senate whose members were elected for seven years would accomplish this purpose did not, he said, duly consider "the amazing violence and turbulence of the democratic spirit. When a great object of government is pursued which seizes the popular passions, they spread like wildfire and become irresistible." *

Why Hamilton wished the Senators to hold office for life.

But, in Hamilton's opinion, to deprive the democratic elements of society of the power to do harm, to erect a barrier against the exercise of their wills that could not be broken down, by no means solved the problem which was before the convention. He had noted the contempt which the states had shown for the laws of the Congress of the Confederation. If they were not completely disarmed, if they were not made entirely dependent upon the national government, what attitude might they be expected to take towards it? In Hamilton's opinion, the experience of the past, supported by his knowledge of human nature, left no doubt as to the answer. All "the great and essential principles necessary for the support of government" would be arrayed on the side

His attitude towards the states

* Works (Lodge's Edition), I., 371, 372. Cf. a letter written by Hamilton to Timothy Pickering in 1802 (Hamilton Ed., VI., 558).

of the states. The peculiar and particular interests of the states, their love of power, the habitual attachment of the people to them, the honors and emoluments which they would be able to dispense, would make them an overmatch for the national government, and render any confederacy precarious. All the "passions of avarice, ambition, interest"—passions which are decisive of the conduct of "most individuals and of all public bodies"—were on the side of the states. Not to strip the states, therefore, of their powers, would be to leave a powerful enemy in the very heart of the citadel.

Hamilton declared with characteristic frankness that he saw but one reason for not destroying the state governments altogether: the shock to public opinion. They were not necessary, he said, for any of the great purposes of commerce, revenue, or agriculture. But as the consent of the states could not be got to a constitution which provided for their own destruction, Hamilton proposed to leave to them their governments, but to put them entirely at the mercy of the national government. He wished to invest the governor of each state with the power of absolute veto on all state legislation, and to make him a creature of the national executive. Give to the President the power to appoint and remove the governors of the states, give to these governors the power of absolute veto, and the states would be stripped of power to do the national government any harm, and thus it would have a chance to live.

The members of the convention were too familiar with American public sentiment to entertain the idea of making a constitution in harmony with Hamilton's ideas. Whatever they might have thought of its theoretical excellence, they knew very well that such a constitution would be rejected, by an overwhelming majority, by every state in the Union. But notwithstanding Hamilton's failure in the convention, his ardent temperament caused him to hope that his ideas might, to some extent, be finally embodied in the new system. "You have made a good constitution," said a friend to Gouverneur Morris after the adjournment of the convention. "That," replied Morris, "depends on how it is construed." No one realized that more clearly than Hamilton. He knew that as, on the one hand, powers actually conferred by the constitution might become obsolete through disuse, so the liberal construction of its powers might give them a greater scope than those who framed it intended. In his speech in the convention he said: Whatever the powers conferred upon the general government, "if it preserves itself it must swallow up the state governments, otherwise it would be swallowed up by them."* Shortly after the adjournment of the convention he wrote a brief paper in which, after mentioning, among other things, "the depredations which the democratic spirit is apt to make on property," he said: "A good adminis-

What he expected to result from a good administration.

* Gilpin, II., 884.

tration will perhaps enable the government to acquire more consistency than the proposed constitution seems to promise for so great a country. It may then triumph altogether over the state governments, and reduce them to an entire subordination, dividing the larger states into smaller districts. The organs of the general government may also acquire additional strength."*

These opinions had a profound influence over the course of American history. The man who entertained them was no idle dreamer—it was impossible for him to see the government going wrong without exerting himself strenuously to set it right. He wanted to increase the power of the national government in order that it might be strong enough to cope with the anarchical tendencies of society. These anarchical tendencies were, as he conceived, of two sorts: First, those hostile to all the restraints of government—which had found expression during the period of the Confederation in the paper-money laws, laws remitting taxes, and in the insurrections in New Hampshire and Massachusetts. Secondly, the disposition of the states, so strongly manifested during the same period, to array themselves against the national government. To enable the national government to deal with both forms of these anarchical tendencies was the problem which he set himself to solve. And the means which he intended to employ were of two sorts: First,

Why he wished to increase the power of the government.

* Hamilton's Works (Lodge's Edition), I., 403.

to induce the government to pass laws in which everything was made subordinate to the suppression of anarchy in both its forms. Secondly, to induce it so to exercise its powers as to enlarge them as much as possible, by construction and precedent. In the ten years during which he wielded over the party which ruled the country an amount of influence never exceeded and rarely equalled by any political leader in the United States, this was the purpose which was always uppermost in his mind: to strike down anarchy wherever it raised its head; so to enlarge the powers of the national government as to increase the probability that when the struggle came between the forces of order and good government and those of anarchy in any form, the right side should gain the victory.

Federalism in its first and second periods contrasted.

This makes it easy to understand how it happened that so many men who were Federalists when to be a Federalist meant to be in favor of the adoption of the constitution, ceased to be Federalists when to be a Federalist meant to be a follower of Alexander Hamilton. To believe in the adoption of the constitution was one thing; but it was an entirely different thing to believe in a system of government which was based on the premise that the danger of anarchy was imminent and that consequently everything should be made subordinate to the suppression of it. The test of the wisdom of Federalism in its first period is, was there need of such a government as

it created? The test of its wisdom in its second period is, was its fundamental presupposition true? Granted that there existed the danger of insurrections in the states which the national government might not be able to put down; granted a real danger that the states might array themselves against its authority: were these dangers sufficiently great to justify the government in making them a determining factor in its policies? Upon the answer to this question depends the judgment which history must pronounce upon some of the most important measures of the Federalist party during the second period of its history.

CHAPTER IX.

THE FEDERALIST FINANCIAL POLICY.

IN January, 1790, Hamilton submitted to Congress his first report on the public credit. The objects of his financial policy were clearly stated in the following paragraph: "To justify and preserve the confidence of the most enlightened friends of good government; to promote the increasing respectability of the American name; *to answer the calls of justice;* to restore landed property to its due value; to furnish new resources both to agriculture and commerce; *to cement more closely the union of the states;* to add to their security against foreign attacks; *to establish public order on the basis of an upright and liberal policy:* these are the great and invaluable ends to be secured by a proper and adequate provision at the present period for the support of the public credit."*

Hamilton's first report on the public credit.

In order to attain these objects, he recommended the payment of the foreign debt in full; the payment of the domestic debt in full, interest and principal, to those who held certificates of debt whether they were the original holders of them or not; and the assumption of the debts of the states.

His recommendations.

* Works (Hamilton's Edition), III., 5.

There were no differences of opinion in Congress as to what should be done about the foreign debt. All agreed that it must be paid in full. The action of the various state legislatures during the period of the Confederation does indeed plainly show that they were ready enough, to find if they could, excuses for not paying it. The unanimity, therefore, with which the resolution to pay it was passed by the House of Representatives* rather indicates the difficulty of finding plausible reasons for evading these obligations than the existence of a strong public opinion in favor of meeting them.

Congress resolves to provide for the foreign debt.

But when the question arose as to the payment of the domestic debt in full to those who held the certificates of debt, plausible reasons for opposing it were not wanting. A great number of the original holders—soldiers who had fought for their country and had been paid off at the end of the war with certificates of indebtedness, citizens who had furnished the government with supplies for carrying on the war—had sold off their certificates, sometimes through necessity and sometimes through a lack

Objections to paying the domestic debt in full.

* There were, as yet, very few standing committees in either House of Congress. The method adopted was to determine first the leading principles of a bill in committee of the whole and then appoint a special committee to report a bill accordingly. For example, the resolution to make provision for the payment of the foreign debt was first passed by the House in committee of the whole. Later in the session, a special committee was appointed to report a bill accordingly.

of confidence in the government, at a ruinously low price,—in some instances for as little as one eighth of the nominal value.* Was it just that the original holders should receive so little, while a lot of speculators reaped a rich harvest out of their necessities? Why should the government give to the present holders of the debt more than they had paid for it? Because it was so nominated in the bond, said the friends of Hamilton. The government had promised to pay the original holders of the certificates, *or their assignees*, the nominal value of the debt; on the strength of that promise, speculators had taken the risk and had bought them. Not to carry out the contract with the assignees was for the government to imitate the example of so many of the states during the period of the Confederation and arbitrarily impair the obligations of contract.

These considerations carried the day. The resolution to provide for paying in full the owners of the certificates of debt passed both Houses February 28, 1790, by a large majority.

The debate showed that Madison was beginning to diverge from the straight course laid down by Hamilton.

Madison's plan.

Madison certainly had no sympathy with the repudiating spirit of the Confederation, and the proposition to scale down the public debt received no support from him. But he proposed that the government should pay the assignees only what they

* Gallatin's Works, III., 127.

had paid, and should hand over the balance of the principal to the original holders. His motion received the vote of but thirteen members of the House, and of these thirteen, nine, significantly enough, were from Virginia.*

No sooner had this resolution passed than another was introduced which provided for the assumption of the debts of the states. From the point of view of Hamilton, assumption was an inseparable part of his financial system. Designed to accomplish political as well as financial objects of the first importance—"to cement more closely the union of the states"; "to establish public order on the basis of an upright and liberal policy"—his system would have failed in a matter of vital moment if it had not included a provision for the assumption of the debts of the states. In his speech in the federal convention he mentioned state debts as one of the interests which tended to array the states against the government. Not to assume the debts of the states was greatly to increase the danger that the government would not be able to maintain itself against the states; indeed, without assumption it was hardly worth while to attempt the experiment. And this opinion was accepted as orthodox doctrine by influential

Why Hamilton recommended assumption.

* Fisher Ames' remarks about Madison in a letter to a friend about this time are suggestive: "He [Madison] is not a little of a Virginian, and thinks that state the land of promise; but is afraid of their state politics and of his popularity there more than I think he should be. He is our first man."

Federalists generally. George Cabot (an influential Massachusetts Federalist), for example, said that the powers which must be exercised by the states in providing for their own state debts were such as belonged to a supreme government only, and could not be entrusted to subordinate ones. He had settled it as an irrefragable truth, he said, that the national government could not go on without assuming the debts of the states.

Nevertheless, the proposal to assume the debts of the states rested on entirely different ground from the proposal to make provision for the payment of the foreign and the domestic debt. The nation owed its foreign and domestic creditors. Should it pay them or not? That was the simple question, and Congress had answered it affirmatively.

The policy of assumption.

But the nation did not owe the debts of the states. Hamilton argued that those debts were incurred for a national purpose, since they were incurred in carrying on the war, and that, therefore, the nation ought to assume them. Such an argument, however, cannot be used to defend the sort of assumption which Hamilton recommended. If it was right for the nation to reimburse the states for expenses incurred for national purposes, then manifestly the amount to reimburse was not what they owed at the time the constitution was adopted, but the amount they owed at the close of the war,—postulating that they had made equal exertions in prosecuting the war and that they had been equally

faithful in complying with the requisitions of Congress. But to assume in 1790 the debts of the states without regard to their efforts to pay their debts since the close of the war; to assume these without taking any account of the faithfulness of the states in complying with the requisitions of Congress, or of the strenuousness of their efforts in carrying on the war, was a mockery of justice, if that was the primary motive of the assumption. If justice to the states was the object, the first thing to be done was to ascertain, as accurately as possible, the contributions of the several states towards carrying on the war, and to fix some standard for determining the contributions which they ought to have made in order to bear their share of the burden. The states that had borne more than their share of the burden would be creditor states; those that had borne less, debtor states. If, for example, some of the states had contributed $2,500,000 more than their due share, the rest, of course, would have contributed less than their share by precisely the same amount. Manifestly, if justice to the states had been the sole object of the proposal to assume the debts of the states, it would have been ridiculous and rankly unjust not to take account of the differences between the creditor and the debtor states.

It is also evident that, had justice been the object, the faithfulness of the states in complying with the requisitions of Congress should have been taken into account. If, for example, $1,000,000 in requisitions had

been paid by the various states since the close of the Revolution, and if some of the states had paid more and others less than their share of this, it would have been unjust to assume the debts of the states in 1790 without taking account of this fact.

But leaving out of consideration these circumstances —ignoring the efforts which the states had made since the close of the war to pay their debts, ignoring their relative faithfulness in granting the requisitions of Congress, ignoring the comparative efforts of the states during the war to tax themselves for carrying it on—a bill was introduced, in harmony with Hamilton's recommendation, providing for the assumption of the state debts as these debts stood in 1790.

Debate on assumption.

The debate began in the House of Representatives, February 23, 1790. Three states—Massachusetts, Connecticut, and South Carolina—had a strong pecuniary interest in assumption, since more than half of all the state debts were owed by them. The representatives of those states were, therefore, very earnest supporters of the measure. On the other hand, Georgia, Maryland, and New Hampshire, whose debts were small, and Virginia, which had greatly reduced its debt since the close of the war by funding securities at a depreciated rate and by selling Kentucky lands, were vigorous opponents of it. Livermore of New Hampshire called attention to the fact that the creditors of the states had not even asked for the measure. In common with

other opponents of assumption, he contended that it was unjust to tax states which had materially reduced their debts, for the benefit of states which had made fewer exertions. Stone of Maryland laid special emphasis on the political tendencies of the measure. Its effect, he declared, would be the consolidation of the government.

Madison was one of the most earnest of the opponents of assumption. If the debts of the states were to be assumed, he contended that they ought to be assumed as they stood at the close of the war. "If this is not done, what is the consequence? The citizens of a state will be burdened in proportion as their state has made exertions to discharge its obligations." He reflected, in what was for him strong language, on a determination expressed by some of the friends of assumption to make the passage of the resolution to assume the state debts a condition of providing for the acknowledged debt of the United States. "I think this a preposterous condition, and a language improper to be held after the decision which has taken place."

But in the opinion of the friends of Hamilton the national government, unless the debts of the states were assumed, would be so entirely at the mercy of the states that nothing could be expected of it in the way of efficient government. When, therefore, after the resolution for assumption had been carried in committee of the whole by a majority of five votes, and the arrival of the

Resolutions for assumption voted down.

representatives from North Carolina had enabled the enemies of assumption to effect a recommitment of the resolution by a vote of twenty-nine to twenty-seven, the friends of assumption moved to recommit the resolutions which provided for the acknowledged debt of the United States. They declared that the debt of the states and the debt of the United States were in their judgment inseparable, and that each should share the same fate. After a debate of nearly two weeks, the resolution for assumption was again lost by a vote of thirty-one to twenty-nine.

This, however, did not end the matter. Sherman of Connecticut brought forward another resolution for assumption. After an elaborate speech by Madison, in which he recommended the advocates of assumption "to forbear those frequent assertions that if the state debts are not assumed the Union will be endangered," the House, in effect, rejected the resolution of Sherman, and appointed a committee to prepare a bill embodying resolutions to make provision for the foreign and the domestic debt of the United States. When the bill prepared by this committee was under consideration, another attempt was made by those favoring assumption. This attempt was defeated, and on June 2 the bill which made provision for the foreign and the domestic debt of the United States passed the House of Representatives, without including a provision for the assumption of the debts of the states.

But the resolute Secretary of the Treasury had one more card to play. He asked Jefferson to use his influence with some of the Southern members to induce them to vote for assumption, in consideration of the location of the capital of the United States in a Southern city. Jefferson had reached the seat of government only in March, 1790, after the resolutions for making provision for the foreign and the domestic debt had passed. Hearing from the New England members frequent threats of the dissolution of the Union, and of the defeat of the provisions for the foreign and the domestic debt unless provision were made for assumption, he consented to Hamilton's proposition. Although he thought "that Congress should always prefer letting the states raise money in their own way" when it could be done, yet in that instance he saw "the necessity of yielding to the cries of creditors in certain parts of the country for the sake of union," and to save us from the greatest of all calamities, "the total extinction of our credit in Europe." When the bill reached the Senate it was amended so as to include the assumption of debts of the states to the amount of $21,500,000, which increased the debt of the United States by more than one fourth, since the foreign debt amounted to less than $12,000,000 and the domestic to about $42,000,000. The bill passed the House, as amended, by a vote of thirty-two to twenty-nine. Thus, after a struggle which for five months had shaken the young government

Bargain between Hamilton and Jefferson.

An assumption measure passes. Its effect.

to its foundations, Hamilton had triumphed. Yet it is more than doubtful if the assumption of the debts of the states had the effect which he hoped from it—the strengthening of the government. One of Washington's correspondents in Virginia, David Stuart, wrote that many who had been warm supporters of the government were "said to be changing their sentiments, from a conviction of the impracticability of union with states whose interests are so dissimilar to those of Virginia." "As to assumption, there is as near a unanimity for opposition as could be expected on any subject. . . . A strong apprehension is felt that the predictions relative to the grasping at power by unwarrantable constructions of the constitution will be justified." When the legislature of Virginia met in the fall of 1790, resolutions were passed by the House of Delegates which expressed in strong language the opinion of that body as to the principles of Hamilton's financial system. A committee of eleven (seven of whom had been in favor of the adoption of the constitution) was appointed to express the substance of the resolutions in a memorial to Congress. Their memorial declared that the sweeping assumption of state debts was unjust to the states which had paid a part of their debts, and that it was "intended to concentrate and perpetuate a large moneyed interest, which would produce a prostration of agriculture at the feet of commerce, or a change in the present form of the federal government, fatal to the existence of American lib-

erty." This action of Virginia was to Hamilton an illustration of what the government had to expect from the states. In a letter to John Jay, Chief Justice of the Supreme Court, November 13, 1790, he said: "This is the first symptom of a spirit which must either be killed or will kill the constitution . . . Ought not the collective weight of the government to be employed in exploding the principles they contain?"*

When the first Congress assembled for its final session in Philadelphia, December 6, Hamilton presented two reports in which he recommended an excise and the incorporation of a national bank. As to the excise, the situation created by Hamilton left to Congress no choice. The large increase of the debts of the government which resulted from assumption made more taxes a necessity. Either the duties on imports must be increased—which was not thought expedient †—or internal taxation must be resorted to. The bill which was introduced in harmony with Hamilton's recommendations, laying a duty on native distilled spirits and increasing the duties on those imported, passed both Houses and became a law.

Hamilton recommends an excise.

In this instance, also, Hamilton had in view political as well as financial objects. He not only wished to raise the necessary taxes, but to do it in such a way as to strengthen the national govern-

His object.

*Works (Hamilton's Edition), VIII., 218.

†"Imports are already loaded as far as they will bear."—Madison to Pendleton, January, 1791. Rives, III., 157.

ment and vindicate for it the powers conferred upon it by the constitution. He wished to do everything in his power to break down the idea of state sovereignty. He knew that an excise would meet with strong opposition. It was indeed true that many of the states imposed excises on various articles. But in the minds of the people of that time there was an enormous difference between an excise laid by a state and one laid by the United States. The former was like any other tax: it was imposed by the people upon themselves. But an excise imposed by Congress was a tax imposed by a foreign government. The people felt that the national government was not their government; that, although the constitution gave it the right to impose excises, the exercise of the right was none the less an invasion of the sovereignty of the states. Jefferson voiced the sentiment of a large part of the American people when he said: "The excise law is an infernal one. The first error was to admit it by the constitution; the second, to act on that admission."

The bill to incorporate a national bank was first introduced in the Senate. As the sessions of that body were then secret, we have no means of knowing the sort of opposition it excited. When it reached the House, it was opposed by Madison with great ability on constitutional grounds. He declared that the "exercise of the power asserted in the bill involves all the guilt of usurpation; and establishes

Madison opposes the bill to charter a national bank.

a precedent of interpretation, levelling all the barriers which limit the powers of the general government and protect those of the state governments."

Why Hamilton recommended a bank.

Hamilton doubtless believed, and rightly, that a bank would be of great service to the government in performing the duties imposed upon it by the constitution. But the political purposes to be served by it were probably quite as important from his point of view. We remember how unwilling he was to withhold from the owners of property a means of defending themselves against the violence and turbulence of democracy. Hamilton doubtless wished by the incorporation of a bank to array upon the side of the government all of the wealthy men whose pecuniary interests in the bank would give them an interest in supporting the government. But what he probably wished to accomplish most of all was to bring into play the implied powers of the constitution. Henry Clay once said that precedents are the habits of states. Hamilton was well aware of this. To help the young government to form habits which would enable it to cope with the anarchical tendencies of the democratic elements of American society, and with the powerful states whose selfish interests were certain, in his opinion, to bring them into collision with it, was one of the cardinal objects of his statesmanship.*

* Hamilton's Works (Lodge's Edition), VII., 378, and VIII., 443, and Gallatin's Writings, III., 123, should be read in connection with this chapter.

CHAPTER X.

THOMAS JEFFERSON.

JEFFERSON'S promotion of Hamilton's assumption scheme is the most remarkable thing in his public life. One can only explain it, as he himself did, by supposing that he did not understand the drift of Hamilton's financial system, and that, at any rate, he thought it preferable to what seemed the most probable alternative, the dissolution of the Union.*

Why Jefferson promoted the policy of assumption.

The idea for which Jefferson stood was the precise opposite of that which constituted the ruling principle of Hamilton's political life. The ruling idea of Hamilton was his love of justice, stability, and order; the ruling idea of Jefferson was his love of liberty and his belief in its practicability to a greater extent and on a larger scale than the world had ever seen. The one thought the supreme need of society was a government strong enough and intelligent enough to enforce justice and preserve order; the other regarded liberty, and a government too weak to curtail it, as the supreme political good. The one saw in the anarchical tendencies of the states and of the ignorant classes of society the greatest danger that confronted the new government; the other saw in the ten-

Leading ideas of Hamilton and Jefferson contrasted.

* Works, IX., 94.

dency of all governments to govern in the interests of a class the greatest danger that confronted the American people, and in the jealousy of the state governments "a precious reliance" against despotism. Hamilton, despite his fundamental allegiance to order, was devoted to liberty, but he thought the centrifugal tendencies of society were so powerful that liberty would degenerate into anarchy unless it should be kept in bounds by a strong government—a government in which the intelligent and property-owning classes should be given so large a share of power that they could be used as a dike against the rising tide of democracy. Jefferson, despite his passion for liberty, was a friend of stability. But he believed that stability would grow into tyranny unless it should be entrusted to the intelligent self-interest of the masses. The one thought it better to risk the tyranny of a strong central government—though he would have diminished the danger as much as possible by giving to the representatives of the masses the power to veto any law—than to put order and stability in jeopardy; the other would risk the anarchical tendencies of a weak central government rather than endanger liberty. The thought of the one was constantly dwelling upon the turbulence of democracy, upon the necessity of erecting barriers against popular tumults; the other asserted that "whenever our affairs go obviously wrong the good sense of the people will interpose and set them right."

It must in candor be admitted that Jefferson's love of liberty and his confidence that it would be used intelligently were so great that it was difficult for him to appreciate the real dangers of anarchy. When he heard of Shays' insurrection, he said: "I hold that a little rebellion, now and then, is a good thing, and as necessary in the political world as storms in the physical. Societies exist under three forms: without government, as among our Indians; under governments wherein the will of every one has a just influence, as is the case in England in a slight degree, and in our states in a great one; under governments of force, as is the case in all other monarchies and in most of the other republics. To have an idea of the curse of existence under these last they must be seen. [This letter was written in France.] It is a government of wolves over sheep. It is a problem not clear in my mind that the first condition is not the best. But I believe it to be inconsistent with any great degree of population. The second state has a great deal of good in it. The mass of mankind enjoys under that a precious degree of liberty and happiness. It has its evils, too; the principal of which is the turbulence to which it is subject. But weigh this against the oppressions of monarchy, and it becomes nothing."*

Holding such opinions, Jefferson's opposition to Hamilton was inevitable. Early in 1791 he seems to

*Works (Washington's Edition), II., 105. Letter to Madison, January 30, 1787.

have made up his mind. In a letter to George Mason (February 4) he said: "I consider the establishment and success of their [the French] government as necessary to stay up our own, and to prevent it from falling back to that kind of a half-way house, the English constitution. It cannot be denied that we have among us a sect who believe that to contain whatever is perfect in human institutions; that the members of this sect have, many of them, names and offices which stand high in the estimation of our countrymen. I still rely that the great mass of our community is untainted with these heresies, as is its head. On this I build my hope that we have not labored in vain, and that our experiment will still prove that men can be governed by reason." *

When the bank bill passed Congress, Washington asked Jefferson and Hamilton to state in writing their opinions of it.

Jefferson's opinion began as follows: "I consider the foundation of the constitution as laid on this ground: that all powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states or to the people. To take a single step beyond the boundaries thus specially drawn around the powers of Congress is to take possession of a boundless field of power, no longer susceptible of any definition."

* Works (Washington Edition), III., 209.

He then attempted to show that the power to incorporate a bank was not one of the powers conferred upon Congress by the constitution, because, first, it was not one of the specially enumerated powers. The constitution gives Congress the power to impose taxes, borrow money, regulate commerce, declare war, etc., but does not say that it can incorporate a bank. Hence, secondly, if the power was conferred at all, it must be capable of being deduced by a fair method of interpretation from one or the other of the two general clauses in the section enumerating the powers of Congress. But it cannot be inferred from the first, which authorizes Congress "to levy taxes to provide for the general welfare of the United States," because "the levying of taxes is the *power*, and the general welfare the *purpose* for which the power is to be exercised. They are not to levy taxes *ad libitum for any purpose they please;* but only *to pay the debts or* provide for the welfare of the Union. In like manner, they are not to do anything they please to provide for the general welfare, but only to *levy taxes* for that purpose." Nor can it be inferred from the second general clause, which provides that Congress shall have power to "make all laws which shall be necessary and proper" for carrying into effect the enumerated powers, because they can all be carried into execution without a bank. But if they can, a bank is not necessary, and consequently not authorized by this clause. In brief, Jefferson interpreted this clause as if it had been written as

follows: And Congress shall have power to pass all laws which may be *absolutely* and *indispensably* necessary for carrying into effect the foregoing powers.

Hamilton's argument was based on the principle that power to do a thing implies power to use appropriate means. To say that Congress had power to achieve certain ends and yet was prohibited from using the fittest means unless they were absolutely necessary, or had been specifically granted, he regarded as absurd. From his point of view, to prove the constitutionality of the bill providing for a bank, no more was necessary than to show that a bank would be useful to the government in borrowing money or collecting taxes, and that the constitution had not prohibited Congress from creating one. Hamilton's reasoning convinced Washington, and the bill became a law.*

Hamilton's opinion.

When, therefore, Congress adjourned March 3, 1791, the nucleus existed of a new political party, of which Jefferson and Madison were to be the leaders. These men saw that, under the influence of Hamilton, Federalism was coming to have a

The nucleus of a new party.

* Washington was in great doubt as to the constitutionality of the bill. We learn from a memorandum left among Madison's papers that the President had a number of conversations with him on that subject, and that at the request of Washington, made shortly before the expiration of the ten days allowed for his decision, Madison prepared the draft of a veto message in case the President finally decided to veto the bill.—Rives' Madison, III., 171.

new meaning. They saw a plain connection between Hamilton's speech in the federal convention, and his financial policy and the theory of constitutional interpretation upon which it was based. The object of that policy, they believed, was to create a moneyed class which could be relied on to support the measures of the government, and to establish a precedent for construing the constitution in a sense which neither the convention that framed it nor the state conventions that adopted it intended. They knew that Hamilton thought the British constitution the best in the world. He had not only avowed this opinion in the convention, but continued to declare it in private conversation. On August 13, 1791, Jefferson recorded a conversation which he had just had with Hamilton, and which, he said, seemed intended by Hamilton to qualify less guarded expressions which had been dropped on former occasions. In that conversation, according to Jefferson, Hamilton in substance said: "I own it is my opinion that the present government is not that which will answer the ends of society, by giving stability and protection to its rights, and that it will probably be found expedient to go into the British form." *

Upon such facts as foundation for such opinions, it was certainly not unnatural for Jefferson and Madison (to say nothing of men of less discernment) to conclude that Hamilton and the party which recognized him as its

*Jefferson's Works (Washington's Edition), IX., 100.

leader intended to subvert the constitution, either openly or practically, by interpretation.

This opinion was strengthened during the next session of Congress, when Hamilton submitted to that body his report on manufactures. According to the doctrine of that report, Congress has unlimited power to do anything which can be done by money to promote the general welfare. Such an interpretation of the constitution conferred upon Congress the power which, in his convention speech, Hamilton had declared ought to belong to it. According to that speech, Congress ought to have the right to pass laws on any subject whatever; according to the report, Congress has the right to pass laws on any subject that requires the application of money. No wonder Madison declared that, according to that interpretation, "the government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular restrictions."*

Hamilton's report on manufactures.

It was, indeed, entirely unnecessary for either Jefferson or Madison to see the facts of the case through the "prism" of any sort of emotion, in order to find abundant reason for opposing the policy of Hamilton. This is frequently overlooked. One of Madison's biographers thinks that Madison was guilty of great inconsistency because he was a Federalist in 1789 and a Republican in 1791. "There had been

Madison not inconsistent in opposing Hamilton.

*Works (Washington's Edition), I. Letter to Edmund Pendleton, January 21, 1792.

no change of political principles," says Mr. Gay, "either in the party he had left or the party he had joined; but each was striving with all its might to adapt the old doctrine to the altered condition of affairs under the Union. The change was wholly in Mr. Madison. That which had been white to him was now black; that which had been black was as the driven snow." *

It is hardly necessary to say that this is an altogether inaccurate statement of the case. A man might be a Federalist in 1783-9, in the sense of wanting adequate powers for the general government, and yet not agree with the Federalism of Hamilton in believing that no powers would be adequate for the general government that did not make those of the states entirely subordinate to it.

But we are not left entirely to inference to determine the motives of Madison. When Madison was an old man he explained the reason: "I deserted Colonel Hamilton," he said, "or, rather, he deserted me; in a word, the divergence between us took place from his wishing to administration, or, more properly, to administer the government into what he thought it ought to be; while, on my part, I endeavored to make it conform to the constitution as understood by the convention that produced and recommended it, and particularly by the state conventions that adopted it." †

* Life of Madison, 191.

† Rives' Madison, III., 177. See in the same, 482, an account of a correspondence between Madison and Dexter bearing on

There were, then, in the facts of the case, perfectly natural and legitimate grounds of difference between Madison and Hamilton. But apart from the inevitable tendency of men to interpret the motives of opponents unfairly, there were special reasons for such unfairness on the part of the opponents of Hamilton. The assumption of the debts of the states had not been expected by the creditors of the states. The measure was Hamilton's, designed by him to accomplish political objects which he thought to be of the greatest importance. The effect of it upon the individuals who profited by it was natural. Says Marshall: "The effect of this measure was great and rapid. The public paper suddenly rose, and was, for a short time, above par. The immense wealth which individuals acquired by this unexpected appreciation could not be viewed with indifference. Those who participated in its advantages regarded the author of a

The effect of Hamilton's measures upon his reputation and leadership.

this subject. That there was a radical difference between the original attitude of Madison and that of Hamilton is shown by a letter written by the former to the latter November 19, 1789. "I consider it very desirable," said the latter, "that the provision to be made should be such as will put the debt in a manifest course of extinguishment. There are respectable opinions, I know, in favor of prolonging, if not perpetuating, it. But, without entering into the general reasoning on that subject, there are considerations which give a peculiarity to the case of the United States. One is, that such a policy is disrelished to a degree which will render heavier burthens for discharging the debt more acceptable than lighter ones not having that object in view."—Rives' Madison, III., 76.

system to which they were so greatly indebted with an enthusiasm of attachment to which scarcely any limits were assigned." *

It was not, however, those alone that profited by assumption who attached themselves to Hamilton. The holders of the domestic debt, the merchants whose business had been languishing because of the universal distrust, and who saw this distrust suddenly disappear at the bidding of the magician at the head of the Treasury Department, the owners of bank stock who were being enriched through the agency of the national bank,—all these classes shared in the enthusiastic attachment for Hamilton and in the unbounded confidence in his genius, and were willing to follow him as a leader almost without question.

What Jefferson and Madison thought of Hamilton.

To what extent members of Congress who supported Hamilton's measures actually profited by them in a financial way it is not necessary to inquire. What Jefferson and Madison, and the opponents of Hamilton in general, saw was that Hamilton's financial policy had put him at the head of an enthusiastic party; they saw that among those selected for directors of the bank were members of Congress who had been its most enthusiastic supporters; they knew Hamilton's belief that only by appeals to pecuniary interests could the great majority of men be induced to support measures in themselves right and proper. From all

* Life of Washington, V., 191.

of this it was but a single step to the conclusion that what in reality had been, probably, a mere incident of Hamilton's administration was its primary object—that the whole purpose of his financial measures had been and was to create friends for the new government, and especially to put at the disposal of the Secretary of the Treasury a party which would act as his willing agent in promoting his anti-republican schemes. On July 10, 1791, Madison wrote a letter to Jefferson in which he said: "The bank shares have risen as much in the market here [New York] as in Philadelphia. It seems admitted on all hands now that the plan of the institution gives a moral certainty of gain to the subscribers, with scarce a physical possibility of loss. The subscriptions are, consequently, a mere scramble for so much public plunder, which will be engrossed by those already loaded with the spoils of individuals. . . . Of all the shameful circumstances of this business, it is among the greatest to see the members of the legislature who were most active in pushing this job openly grasping at its emoluments. Schuyler [Hamilton's father-in-law] is to be put at the head of the directors, if the weight of the New York subscribers can effect it." A month later, writing to the same, he said: "The stock-jobbers will become the Pretorian band of the government, at once its tool and its tyrant; bribed by its largesses, and overawing it by clamors and combinations." *

* Works, I., 538, 541.

On May 23, 1792, Jefferson, in a letter to Washington in which he professed to voice the opinions of the opponents of Hamilton, and in which he was doubtless giving expression to his own views, wrote as follows: They urge that Hamilton's financial policy "has furnished effectual means of corrupting such a portion of the legislature as turns the balance between the honest voters, whichever way it is directed; that this corrupt squadron, deciding the voice of the legislature, have manifested their dispositions to get rid of the limitations imposed by the constitution on the general legislature; that the ultimate object of all this is to prepare the way for a change from the present republican form of government to that of a monarchy, of which the English constitution is to be the model. . . . The partisans of monarchy are eager after their object, and are predisposing everything for its ultimate attainment. So many of them have got in the legislature that, aided by the corrupt squadron of paper dealers, who are at their devotion, they make a majority in both houses. The Republican party, who wish to preserve the government in its present form, are fewer in number; they are fewer even when joined by the two, three, or half dozen Antifederalists, who, though they dare not avow it, are still opposed to any general government; but, being less so to a republican than a monarchical one, they naturally join those whom they think pursuing the lesser evil."*

* Jefferson's Works (Washington's Edition), III., 361, 362. The whole letter should be read.

But to understand even in outline the feelings of the men who called themselves Republicans, in opposition to the Federalists, whom they regarded as monarchists, it is necessary to remember the forms and ceremonies adopted by the new government and the attitude of influential Federalists towards them. Instead of sending a message to Congress, Washington met both Houses of Congress, at the opening of that body, and addressed them with a speech, after the custom of the king of England. When the Senate began to consider Washington's first address, John Adams, who was almost as little of a Democrat as Hamilton, called it his most gracious speech,—the words, as a stanch Democrat from Pennsylvania, William Maclay, remarked, which "are usually placed before the speech of his Britannic majesty." Nor was that the first instance in which John Adams had indicated* in an official capacity his monarchical sympathies. On April 25, he said: "Gentlemen, I do not know whether the framers of the constitution had in view the two kings of Sparta or the two consuls of Rome when they framed it."†

Forms and ceremonies of the new government. John Adams' opinion.

Imagine the effect of talk like this upon the men whose jealousy in behalf of liberty had made them unwilling to grant to the Congress of the Confederation powers which were vitally essential to the existence of the nation; who saw the country drift to the very brink

*Journal of William Maclay, 10. This whole book should be read by the student of the opinions of the time.

†Ibid., 2.

of anarchy before they would consent to enlarge the powers of the national government, and who even then opposed it with such effect that the constitution was adopted by a very narrow majority,—and it will be easy to realize the intensity of the opposition which was aroused by Hamilton's measures, and the strength of the conviction that their ultimate purpose was the subversion of the government.

Monarchists in New York.

This conviction was further intensified by the fact that Hamilton was not alone in this country in entertaining a theoretical preference in favor of a monarchy; that the men who agreed with him were most numerous in the very city in which the first Congress met under the new constitution, and that they made no sort of secret of their opinions.* Speaking of New York society, shortly after he arrived in that city, Jefferson said: "I cannot describe the wonder and mortification with which the table conversations filled me. Politics were the chief topic, and a preference of kingly over republican government was evidently the favorite sentiment."*

Washington's levees.

Washington's levees were, also, a ground of offence to the members of the new party. From Sullivan's account of them it is easy to understand why the great majority of Americans did not take kindly to them.†

*See Randall's Life of Jefferson, I., 560.

†"Washington devoted one hour," said Sullivan, in his Familiar Letters, "every other Tuesday, from three to four, to

We are now in a position to see what the creed of the new party was. In the language of Jefferson, "its object was to preserve the legislature pure and independent of the executive, to restrain the administration to republican forms and principles, and not permit the constitution to be construed into a monarchy, and to be warped, in practice, into all the principles and pollution of the English model."*

Creed of the new party.

these visits. He understood himself to be visited as President of the United States, and not on his own account. He was not to be seen by anybody and everybody, but required that everyone who came should be introduced by his secretary, or by some gentleman who knew himself. . . . At three o'clock or at any time within a quarter of an hour afterwards, the visitor was conducted to the reception room from which all seats had been removed for the time. On entering, he saw the tall, manly figure of Washington clad in black velvet; his hair in full dress, powdered and gathered behind in a large silk bag; yellow gloves on his hands, holding a cocked hat with a cockade in it, and the edges adorned with a black feather about an inch deep. He wore knee and shoe buckles, and a long sword, with a finely wrought and polished steel belt which opened at the left hip; the coat worn over the sword so that only the belt and the part below the folds of the coat behind were in view. The scabbard was white polished leather. He stood always in front of the fireplace with his face towards the door of entrance. The visitor was conducted to him, and he required to have the name so distinctly pronounced that he could hear it. . . . He received his visitor with a dignified bow, while his hands were so disposed as to indicate that his salutation was not to be accompanied with shaking hands. This ceremony never occurred in these visits even with his most near friends, that no distinction might be made."

Long after the death of Washington, Jefferson wrote: "I was ever persuaded that a belief that we must at length end in something like a British constitution, had some weight in his adoption of the ceremonies of levees, birthdays, pompous meetings with Congress, and other forms of the same character, calculated to prepare us gradually for a change which he believed possible, and to let it come on, with as little shock as might be to the public mind."

*Jefferson's Works (Washington's Edition), IX., 95, 96.

As to the opinion that Hamilton and his party intended to introduce a monarchy, it is hardly necessary to say that it was utterly false. In a very important letter written to Edward Carrington May 26, 1792, Hamilton said: "I am told that serious apprehensions exist in your state as to the existence of a monarchical party meditating the destruction of state and republican government. . . . I assure you, on my private faith and honor as a man, that there is not, in my judgment, the smallest foundation for it. A very small number of men may indeed entertain theories less republican than Mr. Jefferson and Mr. Madison, but I am persuaded there is not a man among them who would not regard as both criminal and visionary any attempt to subvert the republican system of the country. . . .

Hamilton's letter to Carrington.

"As to the destruction of the state governments, the great and real anxiety is to be able to preserve the national from the too potent and counteracting influence of those governments. As to my own political creed, I give it to you with the utmost sincerity. I am affectionately attached to the republican theory. I desire above all things to see the equality of political rights, exclusive of all hereditary distinction, firmly established by a practical demonstration of its being consistent with the order and happiness of society. As to state governments, the prevailing bias of my judgment is that if they can be circumscribed within bounds, consistent with the preser-

vation of the national government, they will prove useful and salutary. If the states were all of the size of Connecticut, Maryland, or New Jersey, I should decidedly regard the local governments as both safe and useful. But as the thing now is, I acknowledge the most serious apprehensions that the government of the United States will not be able to maintain itself against their influence. . . . Hence a disposition on my part towards a liberal construction of the powers of the national government, and to erect every fence, to guard it from depredations, which is, in my opinion, consistent with constitutional propriety. As to any combination to prostrate the state governments, I disavow and deny it."*

There is no reason to doubt that this was the truth.

In consequence of the defeat of St. Clair, a law was passed, early in 1792, providing for the increase of the army to upwards of five thousand men. A motion to call upon the Secretary of the Treasury to report the ways and means for meeting this additional expense was passed, but not without opposition. In accordance with Hamilton's recommendations, a law was passed, May 2, increasing the tariff. On April 14, a law was passed allowing one representative for every 33,000 inhabitants. A law to authorize the President to call out the militia in case of combinations to resist the laws of the United States that could not be put down by the ordinary course of justice

Increase of the army and the tariff.

* Works (Lodge's Edition), Vol. VIII. 263.

also passed, although it was warmly opposed on the ground that wise laws never would be resisted, and that the mere fact of resistance was a proof that the laws resisted ought to be repealed. An attempt was made to vest in the President or the Postmaster-General authority to designate and establish post-roads, but the bill was defeated, and the power was conferred upon Congress instead.

When the second Congress met for its second and final session, a motion was made by Dayton that the Secretaries of the Treasury and of War be directed to attend the House, in order that they might give any information in their possession bearing on St. Clair's defeat. The motion was opposed as a dangerous precedent, and likely to subject the House to the influence of the Secretaries. It failed to pass. The Secretaries of the Treasury and of War finally appeared before the committee which had the matter in charge,—a precedent which has been followed ever since. A resolution to call upon the Secretary of the Treasury to report a plan for the reduction of the public debt was passed with difficulty, owing to the growing dislike of Hamilton, and also of anything resembling executive interference with Congress. On February 5, an extradition act was passed which provided that interstate fugitives should be restored. The act also contained a provision for the return of fugitive slaves,—which, owing to the indiffer-

Work of the second session of the second Congress.

ence of public opinion with reference to slavery, does not seem to have attracted any special attention. Shortly before the close of this session of Congress, the Supreme Court decided the first great constitutional question which was brought before it,—that a state could be sued by an individual. This was too much for the strong states-rights sentiment of that time. The day after the decision, a resolution to amend the constitution was introduced by the Federalist Sedgwick in the House, so as to protect the states against suits by individuals. Although no action was taken upon his motion at this time, an amendment to that effect was ratified January 8, 1798.

The Supreme Court decides that a state can be sued.

The new Republican party consisted of three classes of men. In the first place, there were those Antifederalists who had opposed the constitution for pecuniary reasons, because they wanted paper money, or because they wished to be able to avoid paying their debts. Naturally, they now opposed Hamilton's financial policy, for the vital nerve of that policy was the principle that the nation must fulfil its contracts, and that men of power and influence must be interested in the support of the national government rather than in the governments of the states. In the second place, there were the Antifederalists who had opposed the constitution because they believed that the government which it proposed to create would prove

Components of the Republican party.

dangerous to the liberties of the country. Such men saw in Hamilton's financial policy, and in the theory of the constitution upon which it was based, a confirmation of all that they had feared. In the third place, there were some, that had been Federalists in 1789, who had ardently desired a government with powers adequate to the needs of the nation, but who had been and still were quite as earnest in their wish to preserve the powers of the states unimpaired. These men were driven from the Federalist party of Hamilton by his evident determination to increase the powers of the national government at the expense of those of the states.

The new Federalist party, as we may term it, also on its side drew many who had been Antifederalists.

Of the new Federalist party.

The Federalists, in 1789, consisted of two elements: a national element, comprising those who felt that they were Americans first of all, and who desired for their country a government that would enable it to rank with the nations of the world; and a commercial element, composed of those desiring a government strong enough to make and execute laws which would enable them to do business profitably. This latter element—the commercial class, the men with money enough to speculate in government certificates, to buy state securities and bank stock—had the greatest pecuniary interest in Hamilton's financial policy. Many of them had been Antifederalists before the adoption of the constitution; but now they attached themselves to what we

may call the commercial wing of the Federalists. They indeed cared little or nothing about the nation, as such. But when Massachusetts, Rhode Island, New Hampshire, and New York, which had been strongholds of Antifederalism, found what a good thing the government was from a business point of view, they became Federalists.

The Republican and Federalist parties sectional.

From the time of the organization of the Republican party, the two great political parties were chiefly sectional. The Antifederalists had not been a sectional party. Of the six states in which it had been strongest, four—Massachusetts, Rhode Island, New Hampshire, and New York—were in the North, and two—Virginia and North Carolina—were in the South. But the Republican party was a Southern party, and the Federalist party, after the adoption of the constitution, was a Northern party. Topsy's remark, "Sich good times, and me not in 'em," suggests the explanation. Hamilton's financial policy made good times for the commercial Federalists, who were chiefly in the North; but while, in restoring the credit of the government and in destroying the almost universal distrust which had paralyzed business before the adoption of the constitution, it had been of the greatest benefit to the entire country, the planters of the South had no such direct and immediate pecuniary interest in it, and therefore they opposed it.

The Republican minorities in the Northern states and the Republican majorities in the Southern states were composed of widely different classes. The lawyers, the clergy, almost all of the wealth and culture and intellect of the North, were in the Federalist party. But in the South precisely the reverse was true. The small Democratic farmers of the North and the aristocratic planters of the South combined against Hamilton and the Federalists. The term "Republican" is applied to the party in the South, and "Democratic" to the party in the North, opposed to the Federalists, for reasons which will hereafter be discussed at length. Let it suffice here to say that the Northern and Southern wings of the anti-Hamilton party were not only composed of different elements, but had essentially different aims. Now, this union of Northern Democrats and Southern aristocrats was not the result of common ideas as to the proper object and scope and methods of government. The one tie that united them was pecuniary interest. Both classes were in debt, neither class derived more than an indirect benefit from Hamilton's financial policy, while each felt the pressure of a system that insisted with compelling emphasis on the payment of debts. "A common reluctance to pay, a common dread of taxation, a common envy of the more fortunate moneyed class, whose position had been so palpably improved by the funding of the public debt,—though little more so in reality than the position of

Union of Northern Democrats and Southern aristocrats.

everybody else,—made both farmers and planters" join in clamors against Hamilton's system.*

Under such conditions, party warfare was waged with intense passion. Each party looked upon the other as a deadly enemy to the best interests of humanity; each felt that upon the success of its principles depended the welfare of the race. The Republicans, in the opinion of the Federalists, were only Antifederalists disguised by a more respectable name. Unable to prevent the adoption of the constitution, the Republicans, in the opinion of their opponents, were trying to destroy it by opposing the measures without which it could not endure, or, that being impossible, to construe it in such a way as to deprive it of all value. They hated the constitution, so the Federalists believed, because they hated government. Government made them pay their debts, compelled them to pay taxes to carry out its contracts, restrained them from the license of anarchy. In contending against the Republicans, the Federalists felt that they were fighting against anarchists for the very existence of organized society.

Federalist opinion of the Republicans.

The Republicans, in turn, regarded their opponents as monarchists. Filled with the belief that the Federalists were bent on introducing a monarchy, they found evidences of this intention in everything their opponents did. In Wash-

Republican opinion of the Federalists.

* Hildreth, IV., 350.

ington's levees, and in the speeches which he addressed to Congress, they saw forms and ceremonies which were intended to familiarize the people with the idea of monarchy. In Hamilton's funding system they discovered an intention to perpetuate the public debt, that means might always be at hand for corrupting members of Congress, and transforming the government into a monarchy with "kings, lords, and commons." When, in 1792, it was proposed to put on one side of the gold and silver coins a representation of the head of the President of the United States, they thought this would be received as a stamp of royalty. In the doctrine of implied powers, they read a determination to encroach upon, or explain away, the limited powers of the constitution, in order to make this a stepping-stone to monarchy. When, in 1794, the Federalist Sedgwick urged an increase in our military force at a time when there was imminent danger of war with England, Madison was sure that Hamilton was Sedgwick's prompter, and that one of the objects of the Secretary of the Treasury was that of "turning every contingency into a resource for accumulating force in the government." When, in 1794, after three years of patient endurance of the lawless resistance to the collection of the excise in western Pennsylvania, the government at last sent fifteen thousand men to crush the Whisky Rebellion, Jefferson said that "it answered the favorite purpose of strengthening government and increasing the public debt." When, in

the same year, Wayne gained his decisive victory over the Indians, after St. Clair's terrible defeat, the Republicans would not unite in congratulations, because they believed that the war had been unnecessary; that it had been waged to increase the national debt and strengthen the government. In 1793, when the administration refused to permit Genet to rush the country headlong into war with England, Republicans were sure that it was because their opponents, the Federalists, sympathized with monarchical England in her war against republican France. When John Adams, on occasion of the yellow fever in Philadelphia, suggested that Congress authorize the President to postpone the meeting of Congress should circumstances make it desirable, Madison looked upon it as an attempt to get the prerogative for proroguing the legislature. When, in 1798, the Federalists voted a provisional army in consequence of the publication of the X Y Z dispatches, Madison said that it was a universal truth that the loss of liberty at home was to be charged to provisions against danger, real or pretended, from abroad. Firm in the belief that the underlying aim of the Federalists was to accumulate as much power as possible in the general government, the first question which the Republicans asked themselves whenever their opponents proposed any measure was not, is it wise? is it expedient? but, can it be used as a precedent for extending the powers of the government? In 1792, Fisher Ames, a

Massachusetts Federalist, then a member of the House of Representatives, said: "We have near twenty *antis*, dragons watching the tree of liberty, and who consider every strong measure, and almost every ordinary one, as an attempt to rob it of its fair fruit. We hear incessantly from the old foes of the constitution, This is unconstitutional, and that is. And indeed what is not? I scarce know a point which has not produced this cry, not excepting a motion for adjourning."* Believing that the Federalists were bent on introducing monarchy, the Republicans opposed their measures, step by step, and point by point, with the passionate energy of men who felt that they were making the last stand for the liberties of the human race. The Federalists, realizing that such opposition, if successful, could have but one outcome,—the utter overthrow of all effective government,—naturally supposed that to be its aim. And so the fight went on, each side supposing itself to be the champion of the constitution, which the other side was determined to overthrow. The longer the fight continued the bitterer it became, until men in the two parties who had been close personal friends ceased to speak to each other.

* Life and Works of Fisher Ames, I., 114.

CHAPTER XI.

THE FRENCH REVOLUTION.

WHILE the struggle between Federalists and Republicans was going on in this country, the champions of power and the champions of freedom were engaged in a life-and-death struggle in France. For years the finances of the French government had been in a wretched condition. The long and unnecessary wars of the monarchy, the extravagance of the court and nobility, had imposed upon the common people a burden that they were unable to bear. They had to pay the greater part of the taxes, but when they had been taxed even to their utmost capacity the government found itself without the means of indulging its customary extravagance. Finance minister after finance minister had been able to point to but one way out of the difficulty—increased taxation of the privileged classes, the nobles and priests. But these classes obstinately and stupidly refused to help the state in the dilemma which had been created to a great extent by their own extravagance. In consequence of the emergency it was finally decided to call a meeting of the States-General,—representatives of the three great orders in France: nobles, priests, and commons.

The convocation of the States-General.

The news that there was to be a meeting of the States-General sounded in the ears of the common people like the voice of hope to the dying. Under the reign of Louis XV., they had seen justice bought and sold as though it were an ordinary article of commerce. They had seen the money that had been coined out of their very life-blood squandered in presents to the profligate and abandoned, and paid in absurdly high salaries to civil and military officials who made no pretence of performing the duties of their offices. It is said that Louis XV. probably spent more money on his pleasures than was spent during his reign in any one department of the state. The common people saw, says Alison, "the most important operations of agriculture" fettered or prevented by the game laws, and by the other restrictions intended for their support. "Game of the most destructive kind, such as wild boars and herds of deer, was permitted to go at large through spacious districts, without any enclosures to protect the crops. Numerous edicts existed which prohibited hoeing and weeding, lest the young partridges should be disturbed; mowing hay, lest the eggs should be destroyed; taking away the stubble, lest the birds should be deprived of shelter. They had to grind their corn at the landlord's mill, press their grapes at his press, bake their bread in his oven," and then pay what he asked for the privilege. In some provinces they had not even the right to use hand mills without paying

Oppression of the peasantry.

for it, and the nobles had the power to sell to the wretched peasants the right of bruising buckwheat and barley between two stones.

This robbery under the guise of law was made all the harder by the insupportable insolence and arrogance of the robbers. "It was quite usual," we are told, "for the young noblesse of that day to run down the canaille of the streets, and to insult the wives of the bourgeoisie to their husbands' faces" About the middle of the eighteenth century, a grand seigneur thought it a great grievance that Louis XV. should have rebuked him for indulging in the amusement of shooting peasants.

But the twenty-five millions of the French commons, "who counted as nothing in France," and who looked forward with such hopefulness to the meeting of the States-General, were themselves divided by a chasm almost as wide as that which separated them from the nobles. An aristocracy of riches and culture had gradually grown up, composed of professional and business men, and although it was the most intelligent and enlightened part of the state, it was thoroughly imbued with the aristocratic spirit of the nobles, and regarded the toiling multitudes with the utmost contempt.

Classes of which the French people was composed.

Roughly speaking, then we may say that the French people, prior to the Revolution was composed of three elements: the first consisted of tillers of the soil, whose food in some districts was chiefly grass and the bark of

trees, and who hated with inexpressible intensity the rapacious, grasping, grinding, tyrannical nobles who doomed them to such a life, and, also, of the artisans and laborers of the cities, who had only the bare necessaries of life, and who loathed, as the cause of all their wretchedness, the aristocratic commoners that employed them. The second class was composed of the aristocratic commoners, professional and business men, who despised the people below them, and hated the arrogant and insolent nobles who assumed to be above them. The third class comprised the nobles, clerical and lay, the great majority of whom were infamous, or would have been in any other time, because of their dissoluteness, profligacy, and extravagance.

In May, 1789, the States-General met at Versailles. When they had last met, more than one hundred and seventy years before, the three bodies of which they were composed—nobles, priests, and commoners—had voted separately; so that any two had a veto on the proceedings of the other. But France had been taught by Rousseau that all men are equal; and the commoners, who outnumbered the other two bodies, refused to transact any business unless the nobles and priests would meet with them and vote as one body. When these obstinately and persistently refused, the commoners declared themselves the National Assembly of France, and, as such, proceeded to make a constitution.

Struggles between the commons and the other two orders.

When the nobles and priests saw that they could not prevent the action of the commoners, they joined the Assembly after it had assumed to represent the people. Before the Assembly began to make a constitution, it made a declaration of the rights of man. This affirmed, among other things, that all men are born free and equal; that sovereignty resides in the nation; that the natural rights of man can be limited only in such a way as to secure the same rights to others; that all men are entitled to religious freedom, and the freedom of speech and of the press; that no one can be deprived of property save when necessity demands it, and then only in a legal way, and upon condition that he receive just compensation.

Declaration of the rights of man.

The Assembly followed this declaration with the abolition of such institutions as were inconsistent with it. Nobility, peerage, hereditary distinctions of orders,—every institution which was out of harmony with the doctrine of the liberty and equality of the rights of man was swept away. The Assembly framed a constitution providing for a single chamber with supreme legislative authority, and a limited monarch with only a suspensive veto.

Abolition of nobility, etc.

If the Revolution could have stopped here; if the French monarch could have mustered sufficient magnanimity to take the position of a constitutional king; if the French nobles, disregarding the habits and traditions of centuries,

Conditions essential to success of this Revolution.

could have brought themselves to acquiesce in the abolition of institutions which had permitted them to fatten on the blood of the people; if the monarchs and nobles of neighboring states could have seen the destructive work of the French National Assembly without any fear for their own institutions; if the French common people, with the bitter hatred engendered by centuries of cruel oppression, and with their utter ignorance of government, could have been reasonable in their demands and expectations, the terrible convulsion which carried fire and sword all over Europe, and which threatened our own government with destruction, would never have taken place.

But the co-operation of these various causes brought about a new revolution. The Revolution of 1789 had been the work of the intelligent middle classes,—who were chiefly represented in the commons of the States-General, and who were the soundest part of the French state; and the constitution, framed by the National Assembly, put the power of the state chiefly in their hands. But the new Revolution of 1791-3 was the work of the ignorant multitude; and if one wishes to see of what sort a really popular government may sometimes be, he will do well to study with great care this later French Revolution.

Revolution of 1791-3.

Of the various agencies upon whose conduct the permanency and success of the first Revolution depended,—the French king, the French nobles, the kings and

nobles of foreign countries, the French common people,—it was more nearly possible for Louis XVI. of France to act the part required by the situation than for any of the others. If his power to see what the best interests of France required, and his ability to act upon his perceptions, had been equal to his desire to serve his people, little would have been wanting on his part to insure the permanence of the Revolution of 1789. But, feeble in intellect and weak in will, he could not act the part assigned to him by destiny as the condition of preventing the most terrible revolution known to history. He could not free himself from the traditions of his Bourbon ancestors, and he could not follow out any consistent line of policy. The result was that a crisis which imperatively demanded boldness and firmness and energy found only vacillation and hesitation and weakness.

Character of Louis XVI.

It was, however, the conduct of the French nobles and the nobles and monarchs of foreign countries, notably those of Prussia and Austria, that contributed most powerfully to the overthrow of the Revolution of 1789. The monarchies and aristocracies of Europe were naturally alarmed at its principles. If its principles were true and right, they themselves were an anachronism, with no right to be. And in every court in Europe there were plenty of French nobles to stimulate their fears, and urge the necessity of restoring Louis XVI. to the position as absolute

Alliance of Austria and Prussia against France.

monarch from which he had been deposed by the Revolution of 1789. The sovereigns of Austria and Prussia met in August, 1791, at Pilnitz, and agreed upon a plan for a coalition against France, solemnly protesting that on the fate of Louis XVI. depended the fate of the monarchies of Europe. At the same time, an army of French nobles, who had been emigrating from France in a steady stream since the summer of 1789, collected on the banks of the Rhine.

Manifesto of the Duke of Brunswick.

It was impossible for Louis, who had in vain attempted to escape from the country of which he was the nominal ruler, not to sympathize with the purpose of Austria and Prussia. It was impossible for him to make no effort directly or indirectly to assist in achieving that purpose. It was also impossible for the French people, passionately and fiercely jealous of their newly found liberties, not to suspect him of intriguing with the monarchs of Austria and Prussia even more than he did. Accordingly, when the armies of these monarchs drove the demoralized and undisciplined troops of France out of Belgium and invaded France; when their commander, the Duke of Brunswick, issued a manifesto commanding Paris instantly to submit to its king if it would avoid being "razed to the earth," and declaring that the Legislative Assembly, the National Guards, and the municipal authorities would be held answerable for whatever occurred, the people of Paris became delirious with passion.

Their enemy—the enemy of the rights of man—was on the soil of France, while within the city their treacherous king still sat in the palace of the Tuileries. In the war, which they felt to be the war of kings against France, they believed that their king was on the side of kings, against his own country. The king was deposed; the prisons of the city were filled with multitudes suspected of being unfriendly to liberty, and the will of the Parisian mob became more and more the only law in France. As the Austrian and Prussian armies approached nearer and nearer, the passions of the mob became more and more uncontrollable. On the 10th of September the infuriated populace tore open the prisons of the city, and began a work of butchery; nor did they stop till they had murdered eleven hundred men.

September massacre.

The National Convention, which had been summoned when the king was deposed (December 15, 1792), proclaimed France a republic, and declared its hostility to any nation which should permit itself to be ruled by a king or should maintain an order of nobility. The Convention also offered assistance to the people of any nation who would rise against their despots. It brought Louis XVI. before it, condemned him to death, and, in less than a month and a half from the beginning of his trial, "the descendant of a hundred kings" was guillotined near the broken statue of one of his own ancestors.

France proclaimed a republic.

By this act the Convention threw down the gauntlet at the feet of every monarch of Europe, and before the end of the year the "war of armed opinions" began,— on the one side England, and Spain, and Portugal, and Austria, and Prussia, and Russia, representing authority; on the other, France, representing the principles of the Revolution, "a new religion," for which hundreds of thousands of Frenchmen were willing to die. At this juncture, Genet, the minister of the "terrible republic" to the United States, landed at Charleston, and the question had then to be decided whether France, in the war of the people against kings, was to be joined by her old ally or must withstand, unaided, the onset of all Europe.

War with all Europe.

When, in consequence of the invasion of France and the manifesto of the Duke of Brunswick, the king was deposed and the republic declared, the revolutionists realized that the wealthy inhabitants of Paris would prove to be natural foes of the new order of things. Robespierre accordingly appeared before the Assembly on August 17, and demanded the passage of two laws: one authorizing the municipality to arrest, as a suspect, whomsoever it pleased; the other establishing a revolutionary tribunal in Paris for the special purpose of trying those arrested. This idea, that the wealthier classes in France could be kept from open resistance to the Revolution only by

Wealthy citizens of Paris: Robespierre's proposition in 1792.

establishing a system of terror, had begun to bear fruit when Genet arrived in the United States.

It had indeed borne fruit in the September massacre. A word from the revolutionary leaders would probably have stopped that butchery. But they believed it better that eleven hundred men should be murdered in prison—especially since these men were guilty of the crime of opposition to the Revolution—than that France should be convulsed in civil war while she was encompassed on all sides with foreign enemies.

It was not, however, till the 5th of September, 1793, that, in the terrible language of Barère, "Terror was decreed to be the order of the day," though the revolutionary tribunal demanded by Robespierre had been in existence some months, and many persons, guilty of no crime but opposition to the Revolution, and military failure, had been doomed by it to the guillotine. But in September the guillotine was set at work, not to punish offences of any kind, political or military, but in order to frighten into acquiescence those who were opposed to the course of the Revolution. From the 1st of April, when Robespierre's tribunal was organized, until the following September, sixty-six persons were guillotined. But when the system of Terror was established, the activity of the guillotine was quickened. On September 22, the revolutionary tribunal was divided into four sections, so that more prisoners could be tried, and on October 29,

Terror decreed the order of the day.

on motion of Robespierre, the president of any section was authorized to stop any trial after it had continued three days, and ask the jury if they had made up their minds. These two changes increased the activity of the guillotine wonderfully. In October, fifty; in November, fifty-eight; in December, sixty-nine; in January, seventy-one; in February, seventy-three; in March, one hundred and twenty-seven; in April, two hundred and fifty-seven; in May, three hundred and fifty-eight; in the first nine days of June, one hundred and twenty-two, were sacrificed as victims to the system of Terror. On June 10, 1794, a decree was passed depriving prisoners on trial of counsel, and in other ways making it possible for the revolutionary tribunal to work more rapidly. Between June 10 and July 27, the date of Robespierre's overthrow, only seven weeks, thirteen hundred and seventy-six persons were sent to the guillotine!

The machinery which furnished this terrible tribunal with material was simple. Paris was divided into sections, in each of which was a revolutionary committee, "purified," to use the significant phrase of the period, from time to time of all but the most radical revolutionists. These committees employed three means of "maintaining the Terror" in their sections: guarantee cards, denunciations, and the law of the suspects. The guarantee cards were issued by the revolutionary committees, and contained a full history of the person to whom they were

The Terror in Paris.

issued, especially since 1789. Any one who heard a citizen make a remark unfriendly to the Revolution, or suspected him of being unfriendly to it, could go to the nearest revolutionary committee and denounce him. The denounced person was generally sent to prison, while the denouncer received a further protection in that the revolutionary committee wrote on his guarantee card that he was a good citizen,—in this way offering him inducements to denounce as many persons as possible. Finally, the law of the suspects made any one who was of noble birth, or who had held office before 1789; any one who had been in any way connected, whether by relationship or service, with the nobles who had emigrated from France in consequence of the Revolution; any one who could not show that he had made some sacrifice to the cause of the Revolution; in a word, any one who might be supposed for any reason to be discontented with the new order of things,—liable at any moment to be summoned before a revolutionary committee and sent to prison.

Arrests made by these committees were at once reported to a committee of the Convention, called the Committee of General Security, which had charge of the police of the whole country. This committee could order the arrest of any individual in France, and have him brought to Paris. It had control of the prisons of Paris, and selected the victims who were to be tried by the revolutionary tribunal, and exe-

Committee of General Security.

cuted those sentenced to death. This selection of victims was at first made with great care, and those alone were chosen who had made themselves prominent by their opposition to the Revolution. Later the selection became a matter of accident and caprice, the primary object being to appease the terrible hunger of the guillotine with a certain number of victims each day. Friends of prisoners often saved the lives of those in whom they were interested by bribing the clerks of the Committee of General Security to keep the names of their friends where they would not be likely to attract the attention of the public accuser. The unfortunates brought before the tribunal were generally sentenced to death, although in the early days of the Terror they seem to have had a fair trial. After the decree of June 10, however, their trials were mere mockeries. Upon a hint from the judge, the jury declared itself convinced, and immediately brought in a verdict of guilty.

Deputies on mission.

While Paris was in this way terrorized into acquiescence, the same means were employed to prevent opposition throughout the provinces. By a decree of April 30, 1793, deputies on mission from the Convention to the provinces—there were then eighty-two provinces—were granted unlimited power to do whatever seemed to them likely to promote the public good. At the end of June, their number was greatly increased, and when the system of Terror had become established in Paris, they were specifically author-

ized to imprison people at will, and have them tried for their lives by the ordinary courts, or by revolutionary tribunals organized after the pattern of the terrible tribunal of Paris. They controlled not only the lives of the people of the provinces over which they ruled with such an iron hand, but all property was absolutely at their disposal. They could confiscate it to the service of the state, and appeals from their decisions were always rejected. These deputies were to secure acquiescence in the course of the Revolution—without bloodshed if possible, but to secure it at any rate, cost what it might.

The deputy at Lyons illustrated in a terrible way the uses to which the unlimited power given these officials might be put. The revolutionary commission of that city had not sent to the guillotine more than five victims daily between the 9th of November and the 4th of December. This did not make "Terror the order of the day" to an extent satisfactory to the deputies on mission there. On December 4, sixty individuals were shot in a single batch, and the next day two hundred and eight more met the same fate. Guillotining and fusillading, as such shooting was called, continued throughout the first half of December, and on December 21 Lyons was reported "peaceful," and purified of those who were opposed to the Revolution!

Terror in the provinces.

At Marseilles and Bordeaux, and most especially at Nantes, similar tragedies were enacted. The prov-

ince of La Vendée, in which Nantes is situated, received terrible punishment for daring to rebel against the Revolution. In January, 1794, an army was ordered to march up and down the district and arrest suspects and burn all the villages on their route. For two or three months these "infernal columns" moved up and down the district, leaving a trail of blood and ashes to mark their path. At Nantes the ingenuity of the deputy, in whose hands lay the lives and the property of the people of the city, was taxed to the utmost to devise means of ridding the world of those who had been guilty of the terrible crime of opposing the Revolution. The guillotine worked fast, but it was unable to make any appreciable difference in the number of those who crowded the prisons of the city. It was necessary to resort to new methods: those who had revolted against the Revolution, or who were suspected of having done so, were taken outside of the city and shot in batches. It is estimated that eighteen hundred perished in this way. The accidental drowning, on November 16, of ninety priests who, because the prisons were overcrowded, had been confined in an old hulk on the Loire, suggested to Carrier, to whom belongs the infamous reputation of having been responsible for the despotism at Nantes, another way of inspiring terror. In the next few weeks, it is estimated that at least seventeen hundred and seventy-seven persons were drowned in the Loire. Most of them were drowned in the hulks of old vessels,

which were sunk after they were filled with these unfortunate wretches; but, as if for the sake of variety, Carrier had some of them bound hand and foot and thrown into the river.

These deputies on mission were the agents of the Great Committee of Public Safety, a committee of the Convention which was absolute master of France during the Reign of Terror. The revolutionary committees of Paris, the Committee of General Security, the deputies on mission, were all but so many means which the Committee of Public Safety employed to compel France to do its will. The deputies on mission were nominally deputies of the Convention, but really agents of the Great Committee. The Committee of General Security was the agent through which the Great Committee kept Paris in awe, and was one of the means through which the Terror was maintained throughout France. During the period of the Terror, it is scarcely an exaggeration to say that the life and property of every man in France lay absolutely at the mercy of the Great Committee, and the means by which it wielded this despotism was terror.*

Committee of Public Safety.

*See the two volumes of Professor H. Morse Stephens on the French Revolution.

CHAPTER XII.

THE FRENCH REVOLUTION IN AMERICAN POLITICS.

IT is easy to understand how Americans of different temperaments would regard the French Revolution.

Hamilton.

Men of the temper of Hamilton, in whom the love of stability and order was the predominant passion, who regarded anarchy as the most dangerous enemy of society, and who wished to have a strong central government in order to prevent it, would be sure to see in the French Revolution an illustration of the natural tendency of democracies. Hamilton said to Edmund Randolph, in the fall of 1793: "Sir, if all the people in America were now assembled, and were to call on me to say whether I am a friend to the French Revolution, I would declare that I hold it in abhorrence."*

Jefferson.

But men of the temperament of Jefferson would be too sure to see it in an entirely different light. The man who said of the wretched government of the Confederation that to compare it with the governments on the continent of Europe was like comparing heaven with hell would be sure to see in the French Revolution one great fact: the struggle between institutions in which the tyranny and oppressions of

* Jefferson's Works, IX., 171.

centuries had intrenched themselves, and liberty. "God send," he wrote in 1792, "that all the nations who join in attacking the liberties of France may end in the attainment of their own." And in speaking of the September massacre he wrote: "In the struggle which was necessary many guilty persons fell without the form of a trial, and with them some innocent. These I deplore as much as anybody, and shall deplore some of them to the day of my death. But I deplore them as I should have done had they fallen in battle. It was necessary to use the arm of the people, a machine not so blind as balls and bombs, but blind to a certain degree. . . . The liberty of the whole earth was depending on the issue of the contest, and was ever such a prize won with so little innocent blood? My own affections have been deeply wounded by some of the martyrs to this cause, but rather than it should have failed I would have seen half the earth desolated; were there but an Adam and Eve left in every country, and left free, it would be better than it is now." *

And Albert Gallatin, writing to an intimate friend February 1, 1794, when the Reign of Terror was at its height, said: "France at present offers a spectacle unheard of at any other period. Enthusiasm there produces an energy equally terrible and sublime. All those virtues which depend upon social or family affections, all those amiable weaknesses

Gallatin.

* Jefferson's Works, III., 502.

which our natural feelings teach us to love or respect, have disappeared before the stronger, the only, at present, powerful passion, the *amor patriæ*. I must confess my soul is not enough steeled not sometimes to shrink at the dreadful executions which have restored at least apparent internal tranquillity to that republic. Yet, upon the whole, as long as the combined despots press upon every frontier and employ every engine to destroy and distress the interior parts, I think they, and they alone, are answerable for every act of severity or injustice, for every excess, nay, for every crime which either of the contending parties in France may have committed."*

Pecuniary interests of Republicans and Federalists.

The pecuniary interests of the followers of Hamilton and Jefferson tended to strengthen the sympathies of the one party with England, of the other with France. The financial policy of Hamilton was most favorable to the commercial classes, and they had therefore become Federalists. The same classes, too, had the strongest reason for wishing to preserve peace with England. War with England meant the destruction of a large part of their commerce. But the South, where the Republican party was strongest, hoped for positive pecuniary benefits from war with England. Many Southern men were heavily in debt to English merchants. They knew that war would enable them to put off pay-

* Life of Gallatin, 107.

ment, and some doubtless hoped that the chances of war would enable them to escape payment altogether.

Of course, gratitude to the French because of their assistance to us in the Revolutionary War, and hatred of England, were additional reasons inclining people all over the country more or less strongly towards France.

These considerations enable us, to some extent, to appreciate the nature of the crisis which confronted the country when the French minister, Edmond Genet, landed at Charleston in April, 1793. Although only twenty-eight years old, he had already succeeded in revolutionizing Geneva and annexing it to the French republic. To accomplish a similar object in the case of the United States, to make this country completely subservient to the interests of France, was the real object of his mission. Nor did he undertake it for the mere purpose of aggrandizing France. He was an incarnation of one phase of the French Revolution: with all the fervor of his French nature he believed that the cause of France was the cause of the human race. He loved his country passionately; he adored the cause of liberty; he was ready to sacrifice his life for it; it appeared inconceivable to him that all the enemies of tyranny, all virtuous men, should not march with France to the combat. To love liberty was to love France; to be devoted to France was to be devoted to liberty; to espouse the cause of France was to espouse the cause of humanity.

Character of Genet.

The instructions which he received from his government throw a flood of light on his diplomatic career. If the conduct of the American government was "timid and wavering," he was charged "to take such steps as will appear to him the exigencies may require to serve the cause of liberty and the freedom of the people, . . . in expectation that the American government will finally determine to make common cause with us."* The meaning of this sentence is clear. He was to take such steps as the circumstances rendered necessary *in order* that the American government might determine to make common cause with France. But what did he propose to do in order to induce a "timid and wavering" government to make common cause with her? In the light of his career in this country, the answer is clear: if he found the government timid, he intended to enlist the American people so strongly on the side of France as to compel the government to take sides with her or be overthrown.

Genet's instructions.

Additional instructions given to Genet, January 17, contain a suggestive paragraph. He was authorized to make a new treaty with the United States upon a basis more "*liberal* and more *fraternal* than that of 1778," a treaty which would commit the United States to making common cause with France. But until a new treaty was made he was charged to "draw every advantage which the provisions of the sub-

Genet's task.

* State Papers, I., 709.

sisting treaty secure to the republic." He was therefore "expressly enjoined to make himself thoroughly master of the sense of the treaty of 1778, and to be watchful in the execution of the articles which are favorable to the commerce and navigation of the French republic."*

In the year 1778, the United States had made two treaties with France, a treaty of alliance and a treaty of commerce. The treaty of alliance was by its terms "eventual and defensive." Its "essential and direct end" was stated to be the maintenance of the liberty, sovereignty, and independence of the United States. These articles and the general scope of the treaty make it evident that, with the exception of the eleventh article, the intention was to limit the treaty to the war for independence which the United States was then waging. But by the terms of that article the United States "guaranteed from the present time [1778] and forever" "the possessions of the crown of France in America."† Treaties of 1778.

The treaty of commerce was, by its terms, to be perpetual. By the nineteenth section it provided for free entrance to prizes made by either party into the ports of the other, but cruisers belonging to an enemy were not to be permitted to remain in the ports of the other; by the twenty-second section it provided that the privateers of a nation at enmity with either of the con-

*Pitkin's History of the United States, II., 362.
†Lyman's Diplomacy in the United States, I., 52.

tracting parties should not be permitted to fit out their ships or sell their prizes in the ports of the other; and by the twenty-ninth, that each of the contracting parties might have consuls in the ports of the other. These were the articles which Genet was, in effect, instructed to construe in the sense most favorable to France; and in order to induce or compel a "timid and wavering government" to consent to his interpretation, he was to array the American people on the side of France.

Genet at Charleston.

From the beginning of his career in this country, Genet made two facts clear: that his business here was primarily with the American people, and that he did not intend to confine his efforts in behalf of "liberty, fraternity, and equality" to even the most liberal interpretation of the treaties of 1778. Instead of landing at Philadelphia, the seat of government, where he was expected, he landed at Charleston. He knew that France was most popular in the South, and he wished at the start to give the government a vivid impression of the depth of the people's sympathy for his country. Without waiting for the formality of presentation, he began at once to conduct himself, not like a foreign minister, but like a sovereign in his own empire. The treaty of commerce provided that privateers of an enemy of France should not be permitted to fit out in the ports of the United States. The day after Genet's arrival at Charleston, he bought two swift sailing-vessels, equipped

them as privateers, manned them with Americans, and sent them out to capture British merchantmen. The treaty of commerce provided that France might have consuls in the ports of the United States. Genet ordered the French consul at Charleston to act as a court of admiralty to try and condemn any prizes that French cruisers might bring to that port.

The ship in which he came from France, "L'Ambuscade," captured a British vessel, "The Grange," in American waters. The inscriptions on her masts showed what sort of means he intended to employ in order to excite the American people to the French point of fever-heat of enthusiasm. On her foremast was inscribed, "Enemies of equality, change or tremble"; on her mainmast, "Free people, you see in us brothers and friends"; on her mizzen-mast, "We are armed to support the rights of men." The colors of England were reversed, and the flag of France was flying above them.

After a ten days' stay at Charleston, Genet set out by land for Philadelphia. His journey was one long ovation. At every town Republicans poured out in hundreds, shouting themselves hoarse, as they escorted him to their best taverns and entertained him with civic feasts. As he neared Philadelphia, men on fast horses were stationed along the road to give the city timely information of his approach. When he reached Gray's Ferry, thousands of Phila-

His journey to Philadelphia.

delphians took possession of him, and carried him in triumph to the town. The next day he received addresses from the German and French Republicans and from many citizens in Philadelphia. The day after, a "Republican dinner" was given in his honor, and after toasts to "Liberty and Equality," "The French Republic," and "The United States," and the singing of the Marseillaise, the cap of Liberty was placed on his head, "and then it travelled from head to head around the table, each wearer enlivening the scene with a patriotic sentiment."* The same day he was presented to Washington as the minister from the French republic to the United States. His reception by Washington was in marked contrast with his reception by the people. But to understand the attitude of Washington, we must follow the deliberations of the government from the time the news of the war between France and England reached the United States until Genet's arrival in Philadelphia.

As soon as the news of the declaration of war by England was received (April 15, 1793), Washington hastened from Mount Vernon to Philadelphia.

He knew that powerful influences would be brought to bear on the government to induce it to take sides with France. But he could hardly have anticipated the extent to which the news of the war fanned smouldering revolutionary passions into a flame. "By a great proportion of the

All parties sympathize with France.

* Porcupine's Works, I., 107.

American people," says Marshall, "it was deemed almost criminal to remain unconcerned spectators of a conflict between their ancient enemy and republican France. The feeling upon this occasion was almost universal. Men of all parties partook of it. . . . The war was confidently and generally pronounced a war of aggression on the part of Great Britain, undertaken for the sole purpose of imposing a monarchical government on the French people. The few who did not embrace these opinions, and they were certainly very few, were held up as objects of public detestation, and were calumniated as the tools of Britain and the satellites of despotism."*

Of those few, the Secretary of the Treasury was one of the most conspicuous. Before the President reached Philadelphia, Hamilton had prepared a series of questions, which Washington, immediately upon his arrival at the seat of government, sent to each member of the cabinet, with a notification that a cabinet meeting would be held the next day for their consideration. Among the questions considered on that momentous 19th of April were the following:

Cabinet discussions.

Should a proclamation be issued for the purpose of preventing interferences by the citizens of the United States in the war between France and Great Britain? Should it contain a declaration of neutrality? Should a minister from the republic of France be received? If

*Life of Washington, V., 401.

received, should it be absolutely or with qualification? Was the United States obliged by good faith to consider the treaties heretofore made with France as applying to the present situation of the parties? Might the American government renounce the treaties, or consider them suspended, till the government of France should be established? Suppose the treaties binding, what was the effect of the guarantee clause? Did it apply to a defensive war only, or to an offensive as well as a defensive war? Was the war in which France was engaged an offensive or a defensive war? Did any article of either of the treaties prevent British ships of war, other than privateers, from coming into the ports of the United States? Should a special session of Congress be called?*

The cabinet unanimously agreed that a proclamation of neutrality should be issued, and that Genet should be received; but the remaining questions were postponed for further consideration. †

Hamilton and Knox held that Genet should be received with an express reservation of the question as to whether the treaties should be suspended. Admitting fully the right of a nation to change its political institutions at will, they denied its right to involve other nations, absolutely and unconditionally, in the consequences.

Hamilton said that "the declaration of the French nation 'that it will treat as enemies the people who,

*Hamilton's Works (Hamilton's Edition), IV., 359.

† Ibid., 361.

refusing or renouncing liberty and equality, are desirous of preserving their prince and privileged castes, or of entering into an accommodation with them'; and its promise 'not to lay down its arms until the sovereignty and liberty of the people on whose territories the French armies shall have entered shall be established, and not to consent to any arrangement with the prince and privileged classes so dispossessed,' could not but be regarded as an outrage little short of a declaration of war against every government of Europe, and as a violent attack upon the freedom of opinion of all mankind."*

Jefferson, with whom Randolph inclined to agree, thought the treaties as binding with the republic as they had been with the monarchy.† Hamilton contended that in case the treaties were considered binding, the guarantee clauses did not apply to an offensive war, such as France was then waging against England; while Jefferson declined to give an opinion, on the ground that it was not then necessary to decide that question.

The proclamation, issued on April 26, declared the disposition of the United States to pursue a friendly and impartial conduct towards all the belligerent powers, as required alike by duty and interest. It exhorted and warned the citizens of the United States to avoid all acts which might in any manner tend

Proclamation of neutrality.

* Hamilton's Works (Hamilton's Edition), IV., 388.

† Jefferson's Works, VII., 611–627.

to contravene such a disposition; and declared that the government would not only not interfere to protect any citizen who might expose himself to punishment under the law of nations by aiding or abetting any of the belligerents, but that it would cause all such acts to be prosecuted by the American government, so far as they came within the cognizance of the federal courts.

The cabinet considers Genet's prizes and privateering commissions.

At a cabinet meeting called to consider the privateering commissions issued by Genet, and the prizes condemned by French consuls, it was unanimously decided that neither the issuing of the commissions nor the condemnation of the prizes was authorized either by the treaties between France and the United States, or by the laws of nations, and that both commissions and prizes were, therefore, illegal. It was also agreed that "The Grange," the vessel captured by "L'Ambuscade" within American waters, should be restored. But the cabinet was unable to agree when the question arose as to what should be done with the vessels which had been taken by the privateers fitted out by Genet. Hamilton contended that, as these captures were violations of the proclamation of neutrality, the vessels taken should be restored to their owners; otherwise the United States would become a party to the injury inflicted on Great Britain. Jefferson argued that if the captures were illegal—whether they were or not he declined to say—it was for

the courts to say so, and in case they were, to order a restoration of the property.*

When Genet presented his credentials, Washington spoke to him of the friendship of the United States for France. But not a word did he say about the French Revolution. With a mind disposed to base its judgments on facts rather than glittering generalities, it was becoming more and more a question with Washington whether wholesale butchery by the guillotine, and the propagandism of anarchy by the bayonet, even when done in the name of liberty, fraternity, and equality, were so much to be preferred to the old despotism of France.

Washington's reception of Genet.

Genet was very indignant. But what offended him most of all was that certain medallions of "Capet" (Louis XVI.) and his family were in the President's parlor. He protested vehemently against the decision of the cabinet on the subject of privateers. He argued that the provision of the treaty—that France might bring her prizes into American ports—implied that she might control such prizes and dispose of them; and that the clause forbidding either party to allow the enemies of the other to fit out privateers in the ports of the other must be understood as implying a mutual right of both parties to fit out privateers in each other's ports. †

* Hamilton's History of the Republic of the United States, V., 253–8.

† State Papers, I., 155.

Genet defies the government.

Nor did he confine himself to protests. Persisting in the policy upon which he had entered at Charleston, he continued to act on his own interpretation of the treaty, in defiance of the expressed wishes of the government.

The government forbade American citizens to arm and engage in the war; he armed them to engage in the war. The government forbade any one to fit out vessels in American ports to cruise against nations with whom the United States was at peace; he fitted out vessels to cruise against the enemies of France. As the "Citizen Genet" and the "Sans Culottes" had been fitted out at Charleston before the President forbade it, the government did not interfere with their prizes, but only required them to leave our ports. Acting under the direction of Genet, those vessels refused to obey the orders of Washington. The "Sans Culottes" remained, and the "Citizen Genet" went out to make prizes of English vessels, and returned with them into our ports. After Genet was informed that the President was determined to permit no further armaments in American ports, privateers were equipped and commissioned in Charleston, Savannah, Boston, and an attempt was made to equip one in New York.*

But Genet's most flagrant act of defiance occurred in the case of the "Little Sarah." The "Little Sarah"

* State Papers, I., 170.

was an English vessel which had been captured by the French frigate "L'Ambuscade," and sent into Philadelphia. There, under the very eyes of the federal government, Genet undertook to equip her as a privateer and send her to sea to cruise against British vessels. Washington was then at Mount Vernon. Hamilton, who was on the alert for such enterprises, suspected what Genet was about, and reported his suspicions to the cabinet. The cabinet ordered an investigation, and, when the facts were ascertained, called on Governor Mifflin of Pennsylvania to interfere. The governor sent Dallas, his Secretary of State, to beg Genet to detain the vessel in order that it might not be necessary to detain her by force. Genet fell into a passion, and threatened to appeal from the President to the people, the real sovereign, as he said, in this country. Jefferson also went to him, and begged him to detain the vessel. Again the Frenchman's choler rose, and he indulged in violent language. He refused to promise anything, but he finally condescended to say that although the vessel was to drop down the river, it was not with the intention of sailing. Construing this as a promise, Jefferson suggested that Governor Mifflin dismiss his militia, and the governor acted on the suggestion. As soon as this was done, Genet sent the vessel to sea to cruise against the vessels of Great Britain. Defiance could go no further.

The "Little Sarah."

The hot-headed Frenchman had very good reasons for supposing that the French party in this country would overthrow the government, or insure his safety in defying it. A leading Republican paper, the National Gazette, edited by Freneau, a clerk employed by Jefferson in the Department of State, said that the proclamation of neutrality had been issued in order to show that the treaties with France "were of no obligation," and denounced the proclamation as an act disgraceful to the American character.

The tone of Republican papers.

The General Advertiser, another Republican paper, better known as the "Aurora," a name which it subsequently bore, said: "It is no longer possible to doubt that the intention of the executive of the United States is to look upon the treaty of amity and commerce which exists between France and America as a nullity, and that they are preparing to join the league of kings against France." The National Gazette published an article which openly defended Genet for his defiance of the government in the case of the "Little Sarah." He had acted "too honestly," it said; "he was too accommodating for the sake of peace with the United States." The interference by the government with the "Little Sarah" was the "result of a British construction of the treaty with France, at the hazard of involving us with our ally." "The militia of Philadelphia seem to be made the tools of design and dishonor." (Governor

Mifflin had ordered out one hundred and twenty men for the purpose of taking possession of the vessel when Genet so peremptorily refused to promise that she should not sail.) "They were to hold her in possession for Britons, contrary to treaty; and to give mortification and insult to our allies. Will they submit to be the instruments of revenge for Britons? Have they forgotten the circumstances of the late Revolution? Let it not be said of them that they were the tools of ministerial policy, to harass and distress the saviors of our country. The minister of France will, I hope, act with firmness and with spirit. The people are his friends or the friends of France. She will have nothing to apprehend, for as yet the people are the sovereign of the United States." *

* This paper was started in September, 1792, shortly after Jefferson and Madison made up their minds to organize a party in opposition to Hamilton. Its editor, Philip Freneau, was an old college friend of Madison's. On May 23, 1793, Jefferson made in his Anas a record of a conversation between himself and Washington respecting this paper: "He [Washington] adverted to a piece in Freneau's paper of yesterday; he said he despised all their attacks on him personally, but that there never had been an act of the government, not meaning in the executive line only, but in any line, which that paper had not abused. . . . He was evidently sore and warm, and I take his intention to be that I should interpose in some way with Freneau, perhaps withdraw his appointment of translating clerk to my office. But I will not do it. His paper has saved our constitution, which was fast galloping into monarchy, and has been checked by no means so powerful as that paper."

Here we have a plain statement of the question at issue between Genet and the American government. Should the legally constituted authorities of the country decide the attitude which the United States was to take towards France and England, or was the minister of a foreign nation, at the head of a French faction, to decide it for them? Should the President of the United States execute the laws and treaties as he understood them, or should a foreign minister defy the government and act on his own interpretations of them? Genet was trying to answer this question when he used every pretext to make an appeal to public opinion. When he was told that two American citizens, Henfield and Singleterry by name, who had enlisted in one of the privateers which he had fitted out at Charleston, had been arrested in accordance with a decision of the cabinet, he replied with a burst of indignation. "The crime laid to their charge," he said (June 1), "the crime which my mind cannot conceive and which my pen almost refuses to state, is the serving of France, and the defending with her children the common and glorious cause of liberty." When (June 8) he was told that the granting of military commissions within the United States by any foreign authority, especially to American citizens, was illegal, he declared that the right had been given by the treaty of 1778. This Frenchman dared tell the President of the United States, through the Secretary of State, that

Question at issue between Genet and the government.

he was exceeding his powers. "As long as the states in Congress shall not have determined that this solemn engagement shall not be performed, no one has a right to shackle our operations." However, he graciously added that he had shown some deference to the American government. "I have instructed the consuls not to grant titles to Americans commissioning privateers except to such captains as shall obligate themselves under oath to respect the territory of the United States and the political opinions of the President, until the representatives of the sovereign [he meant the representatives of the people in Congress] shall have confirmed or rejected them." He said that every obstruction by the American government to the arming of French vessels was an assault on the rights of man, and a violation of the system of neutrality. "For if our merchant-vessels are not allowed to arm themselves when the French alone are resisting the league of all the tyrants against the liberty of the people, they will be exposed to inevitable ruin in going out of the ports of the United States, which is certainly not the intention of the people of America. Their fraternal voice has resounded from every quarter around me, and their accents are not equivocal—they are pure as the hearts of those by whom they are expressed."

Letters of this sort, published in the Republican papers all over the country, were written for the galleries. They were written to induce the American people to permit the French minister to accomplish in the

United States what France had accomplished in every other country in which her envoys had enjoyed freedom of speech: to substitute the will of France for the will of the constituted authorities unless they would consent to accept "the principles of the Revolution."

With any other man as President, Genet would probably have succeeded. It is more than doubtful if any other man could have kept his feet when such a tornado of French enthusiasm was sweeping over the country, for no other man had the confidence of the people as Washington had it even when overriding the people's will. As it was, the issue seemed for a considerable time in doubt. When the cabinet was debating what could be done to confine Genet to his legitimate functions, the most prominent citizens of Philadelphia, including the governor of Pennsylvania, were attending civic feasts in honor of the French minister, each plunging a knife into the head of a pig to indicate their approbation of the fate that had overtaken the unfortunate king of France.

The affair of the "Little Sarah" undoubtedly contributed materially to bring matters to a climax. Genet's threat to appeal to the people against Washington helped to bring the soberer part of the people to their senses, and the popularity which had made his mission a dangerous menace to American institutions began to wane. Moreover, Genet's threat precipitated a determination, which doubtless

The government asks Genet's recall.

would have been reached sooner or later, to ask the French government to recall him. This resolution was reached early in August. Jefferson immediately wrote to our minister in France, Gouverneur Morris, giving an account of Genet's performances, and asking his recall. A copy of the letter was sent to Genet.

But this letter by no means terminated the enterprises of the hot-headed Frenchman. On the contrary, in replying to it, he demanded that an inquiry be made by Congress into the motives which determined the President of the United States to take on himself "to demand the recall of a public minister whom the sovereign people of the United States had received fraternally and recognized, before the diplomatic forms had been fulfilled with respect to him, at Philadelphia." He said that it was for the representatives of the people, not for a single man, to bring accusations before him. He declared that he would publish his correspondence with Jefferson, his instructions, and those of his consuls, "in order that the American people, whose esteem is dearer to me than life, may judge if I have been worthy or not of the fraternal reception which it deigned to give me." He carried out his threat: he published his instructions and his correspondence; he made his appeal to the people.

Genet appeals to the people.

The result showed that the government had the support of the people. Nevertheless he continued to act as "co-sovereign of the country." In the latter part

of the year, he planned an expedition against the Floridas from South Carolina and Georgia, and one against New Orleans from Kentucky. Early in 1794, Washington decided to hold no further intercourse with him. But about that time the news of his recall was received.

The recall of Genet ended one phase of the struggle between the anarchical tendencies of American society and the forces that made for law and order. For whatever may be said of the nature of the issue involved in the French Revolution—whether Hamilton was right in regarding France as the representative of anarchy, and England as the representative of stability and order; or whether Jefferson was right in regarding France as the representative of liberty, and England of tyranny—there can be no doubt as to the character of the forces evoked in this country by the conduct of the French minister. The party that supported him in effect said: Let the wishes of the people override the will of the government; instead of a government of law, let us have a government of public opinion.

Nature of the struggle between the supporters and opponents of Genet.

But a government of public opinion is only another name for anarchy, and Hamilton and the party behind him knew it. If the proclamation of neutrality was to be disregarded with impunity, if the order to cease enlisting men to make war against a power with whom the United States was at peace was to be disobeyed, if the commands of the government were to be set aside

by the French faction,—there was an end of government; the constitution was only a revised form of the Articles of Confederation.

In a letter to Madison in August, 1793, Jefferson laid down what he conceived to be the true course for the Republicans: "I believe it will be true wisdom in the Republicans to approve unequivocally of a state of neutrality; to abandon Genet entirely, with expressions of strong friendship and adherence to his nation, and confidence that he has acted contrary to their sense. In this way we shall keep the people on our side, by keeping ourselves in the right." When Congress met, public opinion had veered around to the support of Washington, and this programme was carried out by the Republican majority in the House. The House expressed its approbation of the majority in the proclamation of neutrality, and its disapproval of Genet, though without any warmth.* It was not the fault of the Republicans that the government was not broken down, in the fourth year of its existence, in behalf of the most absolute despotism of modern times.

Jefferson's programme followed out by Congress.

On the other hand, it was not the fault of Federalists like Hamilton that it was not exposed to another danger, almost as perilous. If Washington had received the French minister with a

Mistakes of Hamilton.

* This Congress—the third—was the first that had been elected since the organization of the Republican party. It elected its candidate for Speaker by a majority of ten votes.

qualification, as Hamilton wished; if he had followed Hamilton's advice, and declared that the treaties with France did not apply to the situation of things in 1793, the bow would have been bent to the point of breaking. Fortunately for the young republic, the masterful man who was responsible for its policy was as little carried away by sympathy with France as by fear of anarchy. With a mind unclouded by the passions which warped the judgment of his two great secretaries, Washington was able to see the path of duty, and steadfastly did he walk in it.

CHAPTER XIII.

THE WHISKY INSURRECTION.

HAMILTON hoped by his financial policy to increase the stability and strengthen the authority of the Union, as well as restore its credit and provide it with a revenue. With these ends in view, he recommended an excise on distilled spirits as a means of providing the extra revenue rendered necessary by the assumption of state debts.

Of all forms of taxation, probably none was then so unpopular among Englishmen and Americans as an excise. Dr. Johnson's famous definition, "a hateful tax, levied upon commodities, and adjudged not by the common judges of property, but by wretches hired by those to whom excise is paid," well described the general feeling of the people in this country as well as in England. In its address of 1774 to the people of Canada, the Continental Congress laid special stress on the fact that in remaining under the rule of England they were subjected "to the imposition of excises, the horror of all free states."

Prejudice against an excise.

In addition to this an excise laid on the people of the states by the national government seemed like a tax imposed by a foreign government. The Congress of the Confederation had no power to lay taxes on the people,

and this power was withheld from it because the people of the states were disposed to regard it as a foreign government. When Congress humbly requested the legislatures of the states to tax their citizens, its attitude, cap in hand, in the presence of its masters, was one which the majority of the people thought entirely proper. Why should any government outside of the state have power to coerce the citizens of a state? What but a loss of liberty could be the result of investing such a government with any such power? This was the thought of probably a majority of the people at the time the constitution was adopted. But the constitution authorized the government which it created to do great violence to the feelings of the people in this regard. It authorized the government, not to go to the states as a beggar and ask for money, but as a monarch with power to compel obedience to his commands.

Effect of adoption of the constitution on the feelings of the people.

In the nature of the case it was impossible for this change in the constitution to produce any immediate change in the feelings of the people. The new constitution declared that it, and laws and treaties made in accordance with it, should be the supreme law of the land, but so in substance said the old. The Articles of Confederation declared that every state should abide by the decision of the United States in Congress assembled, in reference to all the questions submitted to them by the Confederation. But, in spite of this declaration, the sovereign

states, as they thought themselves, had disregarded the decisions of Congress whenever they pleased. What was to prevent their doing the same under the new government? There were, to be sure, in the new government an executive and a judiciary which had been wanting in the old. But was any one foolish enough to suppose that this executive would dare enforce a law against the wishes of a sovereign and independent state? Senator Maclay of Pennsylvania, as we learn from his Diary, thought the very idea preposterous, and there is little doubt that in this, as in many other respects, he correctly represented the feelings of a large majority of the people.* For what means could the executive employ? It had no standing army, and men who thought as the majority of the people did meant to take good care that it did not get one. And was it reasonable to suppose that militia would march against their fellow citizens and compel them to obey an unpopular and, from their point of view, unjust law? The power of the executive depended entirely on the will of the people, and what reason was there to suppose that the people would go to the aid of the executive against themselves?

To utterly eradicate, once for all, such notions, to make every man in the United States understand that

* "Is it to be expected," he asked, "that a federal law passed directly against the sense of a whole state will ever be executed in that state?"

the new government had power to compel obedience to its laws, to make them feel that the laws of the general government were not mere pieces of advice, suggestions to do this and not to do that, but commands that must be obeyed, was Hamilton's great political object in recommending an excise. Until this question was settled, he knew that the question as to whether there was or was not a government was still undecided. He knew that the existence of a House of Representatives, Senate, President, Supreme Court, and all the governmental machinery that might be devised, did not of themselves prove that the new constitution had created a government. *Had it power to compel obedience to its laws?* That was *the* question, upon the answer to which depended the decision as to whether the new constitution was merely a revised edition of the Articles of Confederation, or whether it had created a government adequate to the needs of the American state.

Hamilton's object.

Hamilton knew that this transcendently important question must be decided some time, and it seemed to him highly desirable that the decision should be reached as soon as possible. In a long letter to Washington, Jefferson objected to the excise as "committing the authority of the government in parts where resistance is most probable and coercion least practicable." * Hamilton in

* Jefferson's Works (Washington's Edition), III., 361.

reply* admitted that this objection had some weight. "It must be confessed," he said, "that a hazard of this nature has been run; but if there were motives sufficiently cogent for it, it has been wisely run." After stating his financial reasons, he added this important paragraph: "Other reasons co-operated in the minds of some able men to render an excise at an early period desirable. They thought it well to lay hold of so valuable a resource of revenue before it was generally preoccupied by the state governments. They supposed it not amiss that the authority of the national government should be visible in some branch of internal revenue, lest a total non-exercise of it should beget an impression that it was never to be exercised, and, next, that it ought not to be exercised. It was supposed, too, that a thing of the kind could not be introduced with a greater prospect of easy success than at a period when the government enjoyed the advantage of first impressions, when state factions to resist its authority were not yet matured, when so much aid was to be derived from the popularity and firmness of the actual Chief Magistrate."†

With these ends in view, he caused a bill laying an excise on distilled spirits to be introduced in Congress in 1790. It was defeated, but a bill with substantially the

* Washington did not send Jefferson's letter, but stated its various points in order, and forwarded them to Hamilton as expressions of opinion in Virginia upon the policy of the government, and asked him to reply to them.

† Hamilton's Works (Hamilton's Edition), IV., 256.

same provisions passed about the middle of the next year.

The law created widespread dissatisfaction, especially in Virginia, North Carolina, and Pennsylvania. In the western counties of all these states, beyond or among the Alleghanies, it seemed to the people not merely an invasion of their rights, but a tyrannical imposition. They were three hundred miles or more from the sea, with very few roads, and those bad. They had to convert their grain into whisky, since it was impossible to carry so bulky an article as corn so great a distance on such bad roads with profit. Whisky was the money of the community, as there was a great scarcity of coin.*

Dissatisfaction with the excise.

Nevertheless, little open resistance was made to the law in Virginia and North Carolina. But in Pennsylvania the enemies of the law determined to attempt to prevent its enforcement. They were urged to do this by the National Gazette, a Republican paper edited, it will be remembered, by Freneau, a clerk employed by Jefferson in the Department of State. At a meeting at Pittsburg in August, 1792, they declared that they would treat as enemies all persons who accepted an office for the collection of the tax. It is interesting to note that Albert Gallatin attended this meeting, and that he acted as its secretary. On September 6, the enemies of the law gave a practical illustration

Pittsburg meeting.

* Adams' Life of Gallatin, 88.

of their meaning by tarring and feathering a revenue officer.

Congress had passed an act in May preceding, giving the President power to use militia in executing the laws of the Union and suppressing insurrections. After the Pittsburg meeting, Hamilton told Washington that he thought the time had come to use the power which that law had put into the hands of the President of the United States. "If this is not done," he said, "the spirit of disobedience will naturally extend, and the authority of the government will be prostrated." Late in September, accordingly, the President issued a proclamation stating that the opposition to laws passed in accordance with an express provision of the constitution was "dangerous to the very being of government," exhorting all persons to desist from unlawful combinations, and charging magistrates to bring infractors of law to justice. He also ordered Randolph, the Attorney-General, to prosecute those who had been concerned in the Pittsburg meeting. It was found, however, that they had committed no offence for which they could be indicted. Throughout the year 1793, the policy of intimidation agreed upon at the Pittsburg meeting was carried out, and a number of men were tarred and feathered.

The Whisky Insurrection, so called, really began July 15, 1794. One ground of objection to the law was that a person accused under it had to go to Philadelphia,

a distance of several hundred miles, in order to be tried. Congress passed an act June 5, 1794, removing this grievance, by providing that offenders against the internal-revenue law might be tried by state courts. Unfortunately, this law was held not to apply to those who had made themselves liable to a penalty before its enactment. Early in July, the marshal set out to serve a number of writs on persons in western Pennsylvania, summoning the defendants to Philadelphia. When, in company with the inspector of the district, General Neville, he undertook to serve them in Alleghany County, the cry was raised, "The federal sheriff is taking away people to Philadelphia," and he was fired upon by a body of armed men. They captured the marshal and would not release him until he had promised to serve no more writs west of the Alleghanies. The inspector fled for his life down the Ohio River, and went thence by a circuitous route to Philadelphia. In two days (July 15–17), the execution of the law was stopped. A mass meeting was called at Braddock's field August 1, at which some 7,000 men were present, and preparations began to be made to array the whole force of the insurgent counties against the United States. The question had then to be answered: Was the constitution of the United States a revised edition of the Articles of Confederation? Were the laws of the government under the new constitution to be like the laws of the government under the old?

Whisky Insurrection begins

Washington called for the opinion of his cabinet as to the course proper to be pursued in the crisis. The opinion of Edmund Randolph, who had succeeded Jefferson as Secretary of State, is profoundly significant. "A calm survey of the situation of the United States," he declared, "banishes every idea of calling the militia into immediate action." A radical and universal dissatisfaction with the excise existed in the western counties of Pennsylvania, he said, and a number of adjacent counties in that state and in Virginia were infected with it. If the attempt were made to enforce the law, these elements might be joined by the disaffected classes generally. Now, Governor Mifflin of Pennsylvania having declared his opinion that the available militia of the state would be unequal to the task of suppressing the insurrection, who could tell whether the militia of other states would serve? The insurgents might call in the aid of the British, with a British war and the dissolution of the Union as the result. The parties in the country were highly inflamed, and "one character alone could keep them in awe; and if the sword be drawn it will be difficult to restrain them."*

Randolph's opinion as to calling out the militia.

From the point of view of a generation that thinks as little of openly resisting the laws of the United States as it does the laws of nature, Randolph's "opinion" seems absurd. But that respect for law in this

* Hamilton's History of the Republic, VI., 71.

country which makes it irresistible had a beginning. It did not exist in the period of the Confederation.

Grounds for it.

How was Randolph to know that in five short years it had so far developed that it could be relied on as a means of coercing rebellious citizens? Nor was he the only prominent man who doubted whether the militia could be relied on. When Governor Mifflin was requested to call out the militia of the state, he declined to do it. He believed that such a step would result in strengthening the revolt, as he doubted whether the militia of the state would "pay a passive obedience to the mandates of the government." And when Washington issued a requisition on the Governors of Pennsylvania, New Jersey, Maryland, and Virginia for 13,000 men (the number was afterwards increased to 15,000), Mifflin felt so doubtful of the result that he travelled over the state and employed his great eloquence to secure the quota of Pennsylvania. If, in spite of the exertions of Mifflin, it be said that in his case and that of Randolph the wish was father to the thought, since they were both Republicans, it certainly cannot be said of Hamilton. And yet he averrd in a letter written to Sedgwick in 1799: "In the expedition against the western insurgents, I trembled every moment lest a greater part of the militia should take it into their heads to return home rather than go forward."* The truth is that there was probably not

*J. C. Hamilton, History of the Republic of the United States, VII., 278.

an intelligent man in the country who was not more or less doubtful as to the result. They had seen the utter contempt which the people had shown for the laws of the Congress of the Confederation; they had seen the government of the French monarchy crumble to pieces, because the French soldiers would not obey orders when they were commanded to attack insurgents. How was any one to know that the result would not be the same in the United States? It is true that Hamilton had more hope of a favorable result than Randolph. But the difference between him and Randolph lay rather in his clear perception of the truth that *not* to suppress the insurrection was to return to the anarchy of the Confederation. A suppression of the rebellion, or anarchy: these, as he plainly saw, were the alternatives. The suppression of the insurrection with such a popular Executive as Washington he doubtless regarded as probable. But whether probable or not, he knew that anarchy was the absolutely certain result of a failure to do it. Agreeing with his great contemporary in France, Mirabeau, that the great end of government was the maintenance of order, he saw that however great the risk it must be made, since everything depended on it. The question at issue, as he himself said, plainly was, "Shall the majority govern or be governed? Shall the nation rule or be ruled? Shall the general will prevail or the will of a faction? Shall there be government or no government?" *

* Hamilton's Works (Hamilton's Edition), IV., 16.

He therefore urged that the militia should be called out, and that the force should be so imposing, if attainable, as "to frighten from opposition, save the effusion of blood of citizens, and secure the object to be accomplished." Washington felt as keenly as Hamilton the gravity of the issue involved. In a letter to Henry Lee, commander of the forces against the insurgents, he said: "No citizen of the United States can ever be engaged in a service more important to his country. It is nothing less than to consolidate and to preserve the blessings of that revolution which at much expense of blood and treasure constituted us a free and independent nation." Fifteen thousand men were called out. In the presence of such an imposing force, the insurrection melted away. But two men were killed, and those in personal conflict with the soldiers, for which the latter received punishment.

Hamilton's opinion.

Hamilton's enemies insisted on attributing to him motives which they regarded as of a very reprehensible character. Rives quotes Hamilton as having declared at a cabinet meeting: "A government can never be said to be established until some signal display has manifested its power of military coercion."* If Hamilton made the remark, the result proved that he was right. The Whisky Insurrection, which gave the government an occasion for displaying its power of coercion, marks an impor-

Epochal character of Whisky Insurrection.

* Rives' Life of Madison, III., 452.

tant epoch in the history of the United States. In 1787, the federal convention framed a constitution providing for an organization to be called a government. In 1789, this so-called government was created. But the question as to whether it was in fact what it claimed to be was not settled until the short-lived Whisky Insurrection was suppressed. Then it became clear that the laws of the government were not mere directive counsel, but commands that must be obeyed. Alexander Johnston calls attention to the contrast between the debates in Congress before and after the Whisky Insurrection. "Before 1794," he says, "there is in many of the speakers almost an affectation of voluntary obedience to federal laws, and of monition to others not to provoke resistance. After this year, this characteristic disappears almost entirely, and the debates have no longer the background of possible club law." But Jefferson and the Republicans had no sympathy with the conduct of the government in suppressing the insurrection. In a letter to Madison written December 28, 1794, Jefferson, speaking of Washington's address at the opening of Congress, said: "I expected to have some justification of arming one part of society against another; of declaring a civil war before the meeting of that body which has the sole right of declaring war; of being so patient at the kicks and scoffs of our enemies, and rising at a feather against our friends."*

*Jefferson's Works (Washington's Edition), IV., 110.

This was not the mere prejudice of a political leader against the measures of an administration to which he was opposed. Jefferson looked upon the states as, in a special sense, the guardians of the liberties of the people. But while he felt so keenly the dangers to which liberty would be exposed by decreasing the powers of the states, he failed almost wholly to perceive that unless the supremacy of law was assured, liberty would degenerate into license, and the country would begin again to drift towards the anarchy of the Confederation. It was better, he seemed to think, that a law which tended to diminish the powers of the states should be forcibly resisted with impunity than that the majesty of law should be vindicated.

CHAPTER XIV.

RELATIONS WITH ENGLAND.

IN the thickest of the struggle with Genet and the partisans of France, England entered upon a policy which so intensified American sympathy with the French people that it threatened to force the country, in spite of itself, into war with Great Britain.

Shortly after the close of the Revolution, England came to the conclusion that the career of her former colonies under a central government would be decidedly short; that their centrifugal tendencies would be sure to cause them to fall apart, and that in the mean time she could shape her course in complete disregard of their rights, since they would be too weak to withstand her.

By the treaty of 1783 it had been stipulated that his Britannic majesty should with all convenient speed, and without carrying away any negroes or other property of the people of this country, withdraw all his armies, garrisons, and fleets from the United States. Having decided that she might make her convenience the rule of her conduct in relation to this country, England resolved not to carry out these stipulations. She found the northwest posts convenient for purposes of trade. She therefore refused to give them up, and exercised sovereignty over the surrounding country as though it still belonged to

The stipulations of the treaty of 1783 violated by England.

her. She also refused to make compensation for the negroes which her armies, in violation of the treaty, had carried away.

To this complete disregard of our rights she added as complete a disregard of our feelings. She contemptuously neglected to send a minister to this country, doubtless with the idea that such a functionary was unnecessary, since she did not intend to take any account, in her dealings with the United States, of the opinions and feelings of the American government. Self-respect, therefore, obliged us (in 1788) to recall John Adams, whom we had sent (in 1785) to represent us as minister at the Court of St. James'. After Adams' return, we had not even the satisfaction of receiving explanations of England's violation of her treaty. We were compelled to see her exercise sovereignty over American territory; we suspected that, in the exercise of it, she stirred up the Indians against us,—and we were without even the means of remonstrating.

England neglects to send a minister to this country.

Deprived by her discourtesy of any direct means of communicating with her, Washington asked Gouverneur Morris, who was then (1789) in London, to ascertain, if possible, England's intentions. Morris summed up the results of his conversations with British officials as follows: "I have some reason to believe that the present administration intend to keep the posts, and without payment for the negroes."

Morris' estimate of British policy.

The wonderful success of the new government caused England eventually to send a minister to the United States. This gentleman, a Mr. Hammond, arrived in 1791. On December 15, Jefferson wrote him a letter containing a full and clear statement of the claims of the American government. Nearly three months later (March 5) the British minister replied, defending the violation of the treaty on the ground that the United States had not kept its engagements, and on May 29 Jefferson replied, presenting the two leading arguments of the American side of the question with great clearness and force.

Jefferson's statement of the American case.

He stated, first, that the American government had kept its engagements. By the explicit language of the treaty, the United States had agreed only to recommend the states to repeal all laws which had put any obstacles in the way of collecting debts due from Americans to Englishmen. That Congress had made such recommendations, and had labored earnestly to induce the states to pass such laws, the English government itself admitted. On what ground, then, could England refuse to give up the posts?

But, secondly, granting that the United States was bound to see to it that the states complied with its recommendations, was it not equally true that England was bound to deliver up the posts? Each being equally bound, that one of the two gave the other a right to complain whose engagement was simplest in its nature and

required least time and preparation for its fulfilment. If the promise of the American government required time and tact, and the promise of England required neither, England could not justify her failure to keep her engagements by pleading that the United States had been equally guilty. The delivery of the posts required but little time and preparation; the passage of the laws which England desired, requiring as it did the separate action of thirteen states, each having the right to do as it pleased, required great tact and considerable time. How could England expect that the American government could succeed in inducing the states to pass such laws when, in violation of her treaty, she still occupied our territory? Not till England kept her own engagements could she complain of this country for its breach of the treaty.

After waiting more than a year for a reply, Jefferson wrote to Hammond asking when one might be expected. Hammond answered that he was waiting for instructions from his government. No reply, in fact, ever was made. Possession England evidently regarded as nine points of the law, and having the power to do as she pleased, she was determined to exercise it. In view of her conduct in that very June, it is evident that she thought criminations and recriminations with such a country as the United States a waste of time. For it was then that she began to act as though she had formed an alliance

The British minister does not reply.

with the French faction in this country for the purpose of driving the American government into the arms of France.

The conduct of England is intelligible only in the light of the immense influence exerted by the French Revolution on English politics. That the great majority of the English aristocracy, of the adherents of the established church, of the holders of place under the monarchy, of the wealthy classes, and indeed of all those whom birth and pecuniary interest had combined to retain as advocates of power and privilege, looked upon the French Revolution at first with distrust and then with horror, goes without saying. These classes were united in detestation of the French Revolution. But profoundly different were the results which the tremendous convulsion in France wrought upon the members of the Whig party, the great party of the people, the party which had successfully opposed the dogma of the divine right of kings and had finally succeeded in making the king of England the creature of Parliament. Some of the Whigs, scanning full in the face the miseries from which it was the purpose of the French Revolution to find an escape, were horrified into believing that any change would be for the better; others, and they formed the great majority, gazing steadily at the political and social forces in operation in France, were terrified by fear of the outcome into averting their glances from the miseries of the French people, and

Influence exerted by French Revolution on English politics.

tried to believe that these were not so bad after all. The minority looked at the French Revolution through the rose-colored mists that rise from a speculative, optimistic, idealistic temper; the majority, through the too sombre lights of simple experience. The accumulating miseries from which the French people had suffered for centuries were seen by the former in the clear light of truth; by the latter, through the tints and hues and blurs of a too conservative temper.

The influence of the French Revolution upon different types of mind was illustrated in a dramatic and pathetic way in the course of a great debate in the House of Commons in May, 1791. Fox and Edmund Burke had been from boyhood intimate personal and political friends. During the American war they had, in Fox's own language, "rejoiced together over the success of a Washington, and mourned almost in tears for the fate of a Montgomery." But Fox saw in "the new constitution of France" "the most stupendous and glorious edifice of liberty which had ever been reared on the foundation of human integrity in any age or country"; Burke, on the other hand, declared that the French Revolution would "inevitably promote tyranny, anarchy, and revolution."

Each held his view with such intensity of conviction as to make impossible the continuance of those ties of friendship that had bound them so closely for many years. "I know the price of my conduct," said Burke

at the close of a great speech; "I have done my duty at the price of him I love." Though Fox denied that there was any loss of friendship, though sobs choked his voice, and tears rolled down his cheeks as he spoke of the love for Edmund Burke which had lasted unbroken for twenty-five years, yet when he stood face to face with his great theme, as his mind became absorbed in the contemplation of the vast issues that were at stake, as his imagination became fired with the thought of the countless blessings which he believed the French Revolution was bringing to the human race, it was evident that his devotion to it was too fervid and intense to permit him to regard as a friend any one who held it in abhorrence.

Six days later the official journal of the Whigs, the Morning Chronicle, contained this announcement: "The great and firm body of the Whigs in England, true to their principles, have decided on the dispute between Mr. Fox and Mr. Burke; and the former is declared to have maintained the pure doctrine by which they are bound together, and upon which they have invariably acted. The consequence is that Mr. Burke retires from Parliament."

Multitudes of Englishmen sympathized with the French Revolution even more ardently than did the great Whig leader. They organized revolutionary societies, issued pamphlets, made addresses and speeches, corresponded with the revolutionary societies of France, sought in all ways

Many Englishmen sympathize with the French Revolution.

to excite public opinion in favor of the French Revolution. "Do not both reason and revelation," said an address put forth by one of these societies, "teach that in order to lay the axe at the root of the tree of wickedness, we must begin with kings and princes, and nobles and priests?" *

The English government, however, remained neutral. When the French king was deposed the English ambassador was recalled, but with protestations of friendship for the French people. The minister of France to England was not recalled when the English minister left Paris. A memorial laid before the French National Convention explains the reason: "A little time after the immortal 10th of August . . . the English government was pleased to recall its ambassador. . . . The French government continued to keep a minister at London, and it expressly charged him to seize upon all occasions of assuring the English nation that, in spite of the ill-humor of its government, the French people desired nothing more ardently than to merit its esteem and to preserve the good harmony and friendship which ought forever to unite two generous and free nations." The memorial also mentioned the "unaccredited agents whom we keep in England," and the instructions which had been given to them in "those delicate circumstances." †

England recalls her minister to France, but France does not reciprocate.

* Annual Register, 1793, 151. † Ibid., 174.

Towards the end of the year, the French government decided not to confine its efforts at revolutionizing foreign governments to secret and unaccredited agents. On December 15, the National Convention issued the famous decree which actually commanded the subjects of every monarchy in Europe to rise in rebellion against their king. On December 24, a proposal to amend the decree of the 15th so as to make it appear that it was not intended to apply to the people of Great Britain was unanimously voted down. On January 16, after a pretended trial of about a month, the Convention pronounced sentence of death upon Louis XVI., and on the 21st he was guillotined. On February 1, France declared war against Great Britain and Holland. Thus began the terrible struggle which for twenty years raged like a mighty conflagration all over Europe. Not unnaturally, from her point of view, did England say in effect that she was making war against "anarchy, that anarchy which has broken all the most sacred bonds of society, dissolved all the relations of civil life, violated every right, confounded every duty; which uses the name of liberty to exercise the most cruel tyranny, to annihilate all property, seize on all possessions; which founds its power on the pretended consent of the people, and itself carries fire and sword through extensive provinces for having demanded their laws, their religion, and their lawful sovereign."

France commands the subjects of every monarchy to rebel.

France declares war against England. How England regards the war.

From the cool vantage-ground of the present, it is easy to determine the character of the terrible forces of destruction which preyed upon civilization for twenty years: on the one hand, a love of liberty and a hatred of tyranny, goaded to the very point of madness by the oppressions of centuries; on the other, a fear of anarchy so excessive as to make clear, sober thinking impossible. These were the primary causes of that titanic struggle in which England and France engaged in 1793. The issues involved were so momentous that from the start each party to the conflict acted as if the ordinary rules of warfare might be disregarded. He who would not assist France was the enemy of liberty,—so thought the French republic; he who was unwilling to make some sacrifices for the sake of order and law was the friend of anarchy,—so thought the governments of England and the rest of Europe.

Regarding the French Revolution as anarchy, and the French as outlaws against the human race, England and Russia made a treaty in 1793 in which they agreed in effect to ignore all the rules and usages of international law in their warfare against France, and to compel other nations to do the same. England immediately began to put in practice the system that was intended to starve out the French and compel them to submit. During the summer of 1793, she made six treaties with different nations, stipulating that the contracting parties should stop all provisions going to France. In June of

that year, the English government gave instructions to the commanders of English ships of war to stop all neutral vessels laden with flour, corn, or meal bound to the ports of France, and send them into British ports. The provisions were to be purchased by the government, and the ships released when they had given security not to go to any country not in amity with Great Britain.* England's provision order.

Whether the United States would have been bound to submit to such regulations if the American government had taken the English view of the French Revolution is a question. The government of Denmark made an able argument against the Anglo-Russian system, on the supposition that the view on which it was based was correct.† But with the American view of the French Revolution there was but one thing to do: protest against the English provision order and, in the last resort, make the protest effective by some sort of forcible appeal to the self-interest of England.

Before America had recovered from its astonishment at this invasion of the rights of neutrals, England struck an even more powerful blow at the neutral commerce of the United States. In time of peace, France enforced the colonial system as vigorously as any country in Europe. But when she was engaged in war with England, she was obliged to open the ports of her colonies

* State Papers, I., 240. † Annual Register, 1793.

to the commerce of all the world. England's supremacy at sea would have made the enforcement of the colonial system a positive contribution to her own resources. Moreover, it would have prevented French colonies from buying what they needed, and would have deprived them of a market for their surplus produce. Accordingly, during a war, France abandoned her colonial system, since her colonies were prevented by England's fleets from trading with the mother country.

In 1756, England had begun to put in practice a principle which was thereafter known as the Rule of the War of 1756. Regarding the temporary abandonment of her colonial system on the part of France as an attempt to protect herself against the British fleet, England determined not to submit to it. She declared by the Rule of 1756 that a trade that was illegal in time of peace was illegal in time of war, and that vessels were liable to confiscation that engaged in it. So, on the top of the provision order of June, 1793, England in November of that year issued an order in council, based on the Rule of the War of 1756, prohibiting all neutral trade with French colonies, not even excepting that which was legal in time of peace.*

Rule of the War of 1756.

As if all this were not enough, England was actively engaged in searching American ships for British seamen. It would have been an outrage on the American flag

* State Papers, I., 430

to which this country ought not to have submitted, if this search had been so conducted as to make it manifest that the impressment of British seamen was the only object. But, as a matter of fact, American seamen were often impressed on the pretext that they were of English birth, and under such circumstances as to justify Americans in believing that this pretext had the approbation of the English government.

Impressment of American seamen.

At the same time, then, that the American government was obliged to put forth all its energies in order to prevent Genet from making it a party to his country's war against England, the English government entered upon a policy which, if it had been submitted to by the United States, would have been equivalent to our taking England's part in the war. We have seen how our government dealt with France; how did it deal with England?

With the American view of the French Revolution, there was but one thing to do about the British provision order of June: protest, as has been said, and, in the last resort, make the protest effective by some sort of forcible appeal to the self-interest of England. The phrase "some sort of forcible appeal to the self-interest of England" may seem a clumsy circumlocution for the simple word "war." But if we are careful to distinguish the wishes and threats of many Republicans from the policy of the Republican leaders, we shall understand that war

with any nation was no part of the Republican programme. It was the dread of centralization, the attachment of a large majority of the people to their states, and the fear that the general government would absorb them, that had called the Republican party into existence. Anything, therefore, like war, that tended to increase the power of the central government, would be sure to provoke the opposition of the leaders of the Republican party.

War creates debts, and debts, the Republicans believed, make it possible to corrupt a government. War makes navies desirable, and, as we shall see, the Republicans believed that navies are fraught with dangers to liberty. Worse than all, a nation engaged in war may find it necessary to employ all its resources, regardless of constitutional limitations, or be beaten. For these reasons, Republican leaders like Jefferson and Madison had no thought of war.

Republican dread of war.

A few day before Jefferson resigned as Secretary of State (on December 31), he transmitted to Congress a report on commerce, in which he intimated what he conceived to be the true foreign policy of the country.

Ostensibly the report with its recommendations dealt with commercial matters only. If any nation imposed high duties upon American products, or prohibited them altogether, or permitted their importation only in American vessels, Jefferson

Jefferson's substitute for war.

recommended retaliation in kind. He believed that Great Britain could be compelled to remove her burdensome restrictions upon American commerce by having the same burdens imposed upon her own. But he was far from thinking that his panacea for commercial ills was good for nothing else. In scores of letters, before and after this time, he stated that in the power to regulate commerce the government possessed the means of righting its wrongs without resorting to war. In March, 1793, he wrote to Madison: "The idea seems to gain credit that the naval powers combining against France will prohibit supplies, even of provisions, to that country. Should this be formally notified, I suppose that Congress would be called, because it is a justifiable cause of war; and as the executive cannot decide the question of war on the affirmative side, neither ought it to do so on the negative side, by preventing the competent body from deliberating on the question. But I should hope that war would not be their choice. I think it will furnish us a happy opportunity of setting another precious example to the world, by showing that nations may be brought to do justice by appeals to their interests as well as by appeals to arms. I should hope that Congress, instead of a declaration of war, would instantly exclude from our ports all the manufactures, produce, vessels, and subjects of the nations committing this aggression, during the continuance of this aggression, and till full

satisfaction is made for it."* In a letter to his daughter, written six days after his report was submitted to Congress, he predicted the Republican policy. "Our affairs with England and Spain have a turbid appearance," he said. "The letting loose the Algerines on us, which has been contrived by England, has produced a peculiar irritation. *I think Congress will indemnify themselves by high duties on all articles of British importation.*" †

Madison's commercial resolutions.

Early in January, Madison offered a series of resolutions in the House of Representatives, proposing restrictions on British commerce. The first resolution, asserting the general principle of retaliation, was carried by a vote of fifty-one to forty-six. Early in March, a copy of the English order of November 6 reached the American government, and, a few days later, accounts were received of a large number of seizures in the West Indies in accordance with it. On March 12, Madison, writing to Jefferson, said: "The merchants, particularly of New England, have had a terrible slam in the West Indies. About a hundred vessels have been seized by the British for condemnation, on the pretext of enforcing the laws of the monarchy with regard to colonial trade." ‡

* Works, Vol. III., 519.

† Italics are mine.

‡ The British Annual Register for 1794 declared (page 255) that the number of American vessels seized under this and similar orders amounted, a few months later, to six hundred.

On the same day, Theodore Sedgwick, a leading Federalist from Massachusetts, offered resolutions providing for a provisional army of fifteen thousand men, and for conferring upon the President the power to lay an embargo for a period not to exceed forty days. Madison wrote to Jefferson that Sedgwick's motion was prompted by Hamilton, and that it was only the "old trick of turning every contingency into a resource for accumulating force in the government." It must be admitted that the private letters of some leading Federalists convey the impression that they did not intend under any circumstances to go to war with England. On May 3, Oliver Wolcott, who afterwards succeeded Hamilton as Secretary of the Treasury, and who at that time held an office under Hamilton which brought him into confidential relations with him, wrote to a friend: "During this interesting period, the duty of an American citizen, above all, is to come to an absolute determination that we will on no account become a party in the war."*

The Federalists attempt to raise an army.

On March 26, a joint resolution laying an embargo on ships in American ports was passed. On April 7, the Republican theory of commercial restrictions as a substitute for war was at last set forth without any ambiguity. A motion was made to discontinue all commercial intercourse with Great Britain after November 1, until she should surrender the western posts, and compensate

*Gibb's Administrations of Washington and Adams, I., 136.

American citizens for the losses inflicted by her anti-neutral attacks upon their commerce.

Sedgwick afterwards introduced a bill providing for an additional military force of twenty-five thousand men. When the bill came to a vote (May 19), successive motions were made for an additional force of twenty-five thousand, fifteen thousand, and ten thousand men. They all failed, and the resolution was finally lost by a vote of thirty to fifty. On May 30, the House again rejected, by a vote of fifty to thirty-two, a bill providing for an increase of ten thousand men, although it had passed the Senate.

The conduct of the British in this country and Canada.

On May 20, 1794, Washington was informed that the British Governor Simcoe, with three companies of troops, had gone twenty or thirty miles into the territory of the United States, to the rapids of the Miami, for the purpose of building a fort there. About three months later, the governor of Canada ordered an American who was proposing to settle on the American side of the Lakes, far from any British post, to leave, and threatening to eject him by force if he disobeyed. Well might Washington say: "This may be considered the most open and daring act of the British agents in America, though it is not the most hostile and cruel." *

In the long debate that followed the introduction of the non-intercourse resolution four facts are worthy of

* Sparks, X., 434.

special note: first, although it was the commerce of New England that especially suffered at the hands of Great Britain, the representatives of that section almost to a man opposed the measure that was proposed ostensibly for its protection; second, the representatives of the South, which had very little commerce, were almost as unanimously in favor of it; third, the policy of the Federalists was to adjust the difficulties between the two countries by negotiation if possible, but, in the mean time, to make preparations for war; fourth, the Republicans were not only opposed to negotiations with England, but also to making any preparations for war.

Debate on the non-intercourse resolution.

As to the first and second facts, it would not be correct to say that the antagonistic interests of the two sections were the direct and immediate cause of the differences between Federalists and Republicans. Madison favored commercial restrictions, not because it was the commerce of New England, instead of that of Virginia, which would be hampered by them. It is indeed true that if Virginia had been a commercial state, if the business of large numbers of her people would have suffered heavily through commercial restrictions, the attitude of Jefferson and Madison towards the policy would probably have been different. In all their reflections upon the subject the fact of this inevitable loss to their constituents would have been predominant, and this would have compelled them to scrutinize more closely the argu-

ments by which they convinced themselves that this loss would eventually be made good. Their contention was that the political interests of the country would be promoted by close commercial relations with France, rather than with England. But even upright men can easily persuade themselves that it is the duty of strangers, rather than their own or that of their friends, to make pecuniary sacrifices for what they consider to be the good of the country.

Why Federalists were more ready to go to war.

Of course the greater readiness of the Federalists to go to war was in part due to the fact that they were in favor of a strong central government, and that they knew a war would tend to create one. Hamilton's enemies, indeed, repeatedly charged him with desiring to bring on a war for the sake of strengthening the government. That charge is groundless. He was too much of a statesman not to see how disadvantageous, if not disastrous, a war would be to the young nation. He knew, as did all other intelligent Americans, that war would lay a heavy burden on the new government, that it would disarrange the finances, interrupt prosperity, and that when there was so little national patriotism it might seriously endanger national stability. We may be sure, also, that he regarded a war with England in 1794, when she was engaged in what he looked upon as a struggle with anarchy, as particularly disastrous. Nothing but absolute and dire necessity, Hamilton doubtless thought,

ought to be permitted to drive the United States to war with England, when war would mean alliance with anarchy against the forces that formed the very foundation of civilization.

Republican attitude towards negotiation.

The attitude of the Republicans towards negotiation with England was probably due, to a considerable extent, to their fear that a negotiation might succeed. In their entire confidence that they could compel respect for the rights of the United States by commercial restrictions, they did not wish to hamper the country by a treaty. The best treaty the country could obtain, they felt sure, would not be favorable, and some of its provisions, they feared, would deprive the country of its most powerful weapon. There was also a sentimental reason which had a powerful influence, not only with the masses of the party, but with its leaders. France, their old friend, was fighting for liberty; England, their old enemy, was fighting for despotism. To make a treaty with England was to make a treaty with the enemy of France and of liberty.

The extent to which the "revolutionary madness" of France had infected the people of this country was clearly shown by the influence of purely sentimental considerations on the debate. As Tracy said, "This discussion"—on Madison's resolutions—"has assumed an appearance which must be surprising to a stranger and painful to ourselves. The Congress of the United States is seen deliberating, not upon the welfare of our own

citizens, but upon the relative circumstances of two European nations, and this deliberation has not for its object the relative benefit of their markets to us, but which form of government is best and most like our own, which people feel the greatest affection for us, and what measures we can adopt which will best humble one and exalt the other."

But Washington stood unmoved by such considerations. Aiming only at the welfare of the country, he paid no heed to the clamor of parties and of partisans. He decided to try negotiation before making the perilous appeal to arms. In April, 1794, he nominated John Jay, Chief Justice of the Supreme Court, as envoy extraordinary to England. The Senate confirmed the nomination, and Jay went to England for the special purpose of attempting to settle the difficulties between the two countries.

Jay sent to England.

The appointment of Jay did not prevent the Republicans from pushing their policy of commercial restrictions. The bill to prohibit all intercourse with Great Britain passed the House, but was defeated in the Senate by the casting vote of John Adams. This action of the Senate called forth a letter from Jefferson which showed the democratic drift of Republican sentiment. "This body" (the Senate), he wrote to Madison, "was intended as a check on the will of the representatives when too hasty. They are not only that, but completely on the will of the people also,

Jefferson on the Senate.

and, in my opinion, are heaping coals of fire not only on their persons, but on their body as a branch of the legislature. . . . It seems that the opinion is fairly launched into the public that they should be placed under the control of a more frequent recurrence to the will of their constitutents. This seems requisite to complete the experiment whether they do more harm than good."

It was in this session that the beginnings of the United States navy were made. The question was whether to fit out a squadron and send it to the Mediterranean to keep the Algerine pirates from preying on our commerce, or to appropriate money to buy a peace. It was finally decided, January 2, to do both: to purchase a peace and provide a naval force. The first Committee of Ways and Means ever formed in the House of Representatives was appointed to consider the ways and means for supporting the naval force which they might recommend as desirable. Such questions had before this been referred to the Secretary of the Treasury. This committee recommended the building of four frigates. The bill as passed provided for six. But the opposition succeeded in adding a clause to the effect that proceedings should be suspended in case of a peace with Algiers, and for the purpose of buying peace a million dollars was appropriated

Beginnings of a navy.

The grounds of the Republican opposition to the creation of a naval force were clearly stated by William Branch Giles of Virginia. The policy of creating a navy "involved a complete dereliction of the policy of discharging the principal of the public debt. . . . To increase her navy and decrease her debt . . . exceeded the ability of any nation. . . . It was the most expensive of all the means of defence, and the tyranny of governments consists in the expensiveness of their machinery. . . . The system of governing by debts he conceived the most refined system of tyranny. . . . There is no device which facilitates the system of expense and debts so much as a navy"; and he declared that he should value his liberty at a lower price than he now did if this policy should obtain. This was orthodox Republican doctrine; whether it was in harmony with the best interests of the country, the history of the War of 1812 will show.

Republican opposition to it.

Perhaps the most important act of this session was the Neutrality or Foreign-enlistment Act, which was passed June 5, 1794, to furnish a basis upon which the judiciary could act in preventing the citizens of the United States from violating neutrality. It is gratifying to American pride to know that, though it was the first act of the kind that was ever passed, it has since been imitated in the legislation of most European states.

Foreign-enlistment Act.

CHAPTER XV.

JAY'S TREATY.

ELEVEN years after the acknowledgment of the independence of the United States, England continued to occupy American posts, and exercise sovereignty over American territory; in violation of the treaty of 1783, she had carried away American property and had made no compensation for it; she was capturing American ships on the ground that we had no right to trade with the colonies of France in time of war, since we did not have that right in time of peace; she was impressing American seamen; and she was preventing by force American vessels from carrying provisions to French ports. It was to demand redress for these grievances that Jay was sent to England. To have submitted to them under any circumstances would have been galling; to submit to them when, in violation of our treaties, submission was equivalent to taking England's part against our old ally was humiliating; to submit to them when England was fighting on the side of the combined despots of Europe against France was, in the opinion of the Republicans, to be guilty of a base crime against the human race, and to make our professions of devotion to liberty an idle mockery.

Summary of American grievances against England.

Fisher Ames said that "if a treaty left to King George his island it would not answer, not if he stipulated to pay rent for it."* There was truth in his assertion. To make any sort of treaty with England was to be on friendly terms with her, and that, the Republicans believed, was to be guilty of disloyalty to the noblest of causes.

Concession of Jay's treaty.

But when the humiliating truth became known that the representative of the United States had signed a treaty which left England free to continue impressing American sailors and compel them to fight against France; which left her free to continue making us a party to her attempts to starve out the people who had so recently helped us with their money and their blood; which left her free to prevent by force any American trade with the ports of the colonies of France; which gave her the right to confiscate French goods on American vessels, when our treaty with France did not give to France the right to confiscate English goods on American vessels; which contained no provision for compensation for the negroes carried away by British armies at the close of the Revolution—when all this became known, one can faintly imagine how hundreds of thousands of American cheeks mantled with shame, and hundreds of thousands of American hands clenched in impotent rage.

* Annals of Congress, 1795–6, 1249.

The only grievance of the United States which the treaty promised to terminate was England's occupancy of American territory. But as the treaty of 1783 had stipulated for the withdrawal of British troops from American territory with "all convenient speed," what assurance was there that the new stipulation—that the frontier posts should be evacuated on or before June 1, 1796—would be any more faithfully observed? Moreover, no compensation was allowed for the injuries inflicted upon the United States by their previous detention.

The only grievance which it promised to terminate.

Besides the provisions which ought to have made the treaty odious to Americans of all parties, there were some which made it peculiarly offensive to the partisans of France. In every disputed point it made the French interpretation of the treaties between France and the United States impossible to the American government. Genet had maintained that those treaties gave France the right to fit out privateers, and sell prizes in American ports; this treaty provided that privateers of an enemy of the United States or of England should not be allowed to arm their ships or sell their prizes in the ports of the other, but that ships of war of either power should be hospitably received in the ports of the other, and permitted to sell their prizes there. Genet had maintained that the treaties between his country and ours gave him the right to furnish Americans with commissions against

Provisions especially offensive to the partisans of France.

England; Jay's treaty provided that Americans should not accept commissions from the enemies of England against England, nor Englishmen commissions from the enemies of the United States against the United States, and that citizens of either country accepting such commissions were to be regarded as pirates. This rule would have made pirates of the Frenchmen who came to this country to take part in the Revolutionary War against England, before war was declared between France and Great Britain!

The treaty did indeed provide that none of its clauses should be construed contrary to previous treaties with other nations. But what satisfaction could that provision give to the partisans of France when they knew that the Federalist interpretation of the treaties with France was the one that was to prevail?

Other clauses of the treaty were hardly less offensive to the Republicans. Although Jay had been instructed to sign no treaty which did not to some degree open to us the West India trade, his treaty opened that trade only to American vessels of seventy tons or less. This apparent concession was bought by accepting it under conditions which deprived it of all value. British ships of any tonnage were to be admitted into the ports of the United States for West India commerce, but American vessels were not to be allowed to carry to any foreign country cotton, coffee, sugar, or molasses.

Provisions as to the West India trade.

The only real concession which the treaty made to the United States was the permission to American vessels to trade freely with the British East Indies in all articles whose importation and exportation were not entirely prohibited. But to say nothing of other offensive features, in return for this concession the United States agreed to permit British ships to enter American ports on the footing of the most favored nation—an agreement which prevented the United States from giving special favors to any country, in return for concessions from that country, without granting the same favors to England, and which bound the Republicans to advocate submitting to any insults to which England might choose to subject us, or go to war when war, as they believed, was in the highest degree inimical to liberty.

The East India trade.

In addition to the more serious objections to the treaty, there was an exasperating appearance of reciprocity where the advantages were, in fact, all on one side. Of what benefit was it likely to be to this country that privateers of an enemy of the United States were not to be allowed to be fitted out in English ports? Or that Englishmen should not be allowed to accept commissions from the enemies of the United States? Or that American ships of war should be hospitably received in British ports? But perhaps the most extraordinary article in the treaty was the last. The first ten articles—those which provided

Deceptive appearance of reciprocity.

for the evacuation of the frontier posts, and the appointment of commissions—were to be permanent. All of the remaining articles, except the one which related to the West India trade, were to be limited in their duration to twelve years from the date of the ratification of the treaty. The article relating to the West India trade was to expire two years after the close of the war between England and France. And if the United States and England were unable to agree upon new arrangements to take the place of the provisions of the West India article—so the last article provided—*all of the articles of the treaty with the exception of the first ten were likewise to expire by limitation!* It seemed as though England proposed to compel the United States to accept such conditions relating to the West India trade as she saw fit to impose by withdrawing the meagre advantages conferred by the other commercial articles if this country did not consent to them. One cannot wonder that under the bias of party passion even Madison said: "Indeed the treaty from one end to the other must be regarded as a demonstration that the party to which the envoy belongs . . . is a British party, systematically aiming at an exclusive connection with the British government, and ready to sacrifice to that object as well the dearest interests of our commerce as the most sacred dictates of national honor. This is the true key to this unpar-

Madison's characterization of the treaty.

alleled proceeding, and can alone explain it to the impartial and discerning part of the public." *

Three commissions were provided for: one, to determine the Northeast boundary; another, to fix the amount of debts due from Americans to British citizens which the obstruction of justice had made it impossible to collect, and which were to be paid by the United States; a third, to determine the amount due from British citizens to citizens of the United States for illegal captures and confiscations.

Three commissions provided for.

The treaty reached the United States shortly after Congress adjourned, and a special session of the Senate was called to consider it. By the exact majority required by the constitution— twenty to ten—the Senate voted (June 24) to ratify it provided the West India article should be expunged.

The Senate ratifies the treaty.

Washington was undecided as to his final action when the Senate adjourned. On July 3, he wrote to Hamilton, who had resigned in the preceding January, and asked him to state his opinion of it. Washington told his former Secretary that he wanted "the favorable and unfavorable side of each article stated and compared together." † Complying with Washington's request in an elaborate letter, Hamilton objected to the West India article, and also

Hamilton advises Washington to ratify it.

* Madison's Writings, II., 45.

† Hamilton's History of the Republic, VI., 228.

to the article which left England free to treat provisions as contraband of war. Believing, however, "that the treaty closed, and, on the whole, as reasonably as could have been expected, the controverted points between the two countries," he advised its ratification. But he thought our minister to England should be instructed not to exchange ratifications if the provision order should be in force, and, in any case, to remonstrate against the assumption by England of the right to treat provisions as contraband of war.

The treaty published.

Shortly after the adjournment of the Senate, one of the senators from Virginia, Stevens Thompson Mason, through what Jefferson euphemistically termed a bold act of duty,—really through a violation of an injunction of secrecy imposed by the Senate,—gave the treaty to the Democratic "Aurora" for publication.

The wrath of the people.

The wrath of the people was roused; the angry waves of public opinion hurled themselves like furies upon the frail bark which bore the hopes of the friends of the government, while she trembled and quivered like a leaf in an autumnal gale. Could she weather the storm? Her resolute captain seemed almost to doubt it. "Never since I have been in the administration of the government," Washington wrote from Mount Vernon, July 29, to Edmund Randolph, "have I seen a crisis . . . from which more is to be apprehended, whether viewed on one side or the

other." Two days later, writing to the same, he said: "This government in relation to France and England may be compared to a ship between the rocks of Scylla and Charybdis. If the treaty be ratified, the partisans of the French, or rather of war and confusion, will excite them to hostile measures, or at least to unfriendly sentiments; if it is not, there is no foreseeing all the consequences which may follow, as it respects Great Britain." *

But he had made up his mind to ratify the treaty if England would agree to expunge the West India article and suspend the operation of the provision order; and the opposition to the treaty did not shake his determination. "The conditional ratification (if the late order which we have heard of respecting provision vessels is not in operation)," he wrote to Randolph, July 29, "may on all fit occasions be spoken of as my determination. . . . My opinion respecting the treaty is the same now that it was, namely, not favorable to it, but that it is better to ratify it in the manner the Senate have advised, and with the reservation already mentioned, than to suffer matters to remain as they are, unsettled." † "It is not to be inferred," he said in the letter of July 29, "that I am disposed to quit the ground I have taken, unless circumstances more imperious than have yet come to my know-

Washington decides to ratify the treaty.

* Sparks' Writings of Washington, XI., 48, 51.

† Ibid., XI., 36.

ledge should compel it; for there is but one straight course, and that is to seek truth and pursue it steadily."

How "imperious the circumstances" actually were, it is difficult for us of this generation to realize. The Democratic party in Philadelphia solemnized the fourth of July as a day of national humiliation. The ceremony closed with a representation of Jay holding scales in which British gold preponderated over American independence—as if to declare that it was inconceivable that an American should have signed such a treaty except through the influence of corrupt motives.

Intensity of the opposition to it.

Nor was this sort of opposition confined to unimportant men. Samuel Adams of Massachusetts; Cæsar A. Rodney of Delaware, afterwards Attorney-General under Jefferson and Madison; John Dickinson of the same state, a member of the Federal Convention and an advocate of the adoption of the constitution; George Wythe of Virginia, chancellor of the High Court of Chancery, a man distinguished for his moderation, an ardent advocate of the adoption of the constitution, who had presided at a meeting called to express approval of the proclamation of neutrality; Charles C. Pinckney of South Carolina, a member of the Federal Convention and also an earnest advocate of the adoption of the constitution; John Rutledge of the same state, likewise a member of the Federal Convention, and for a time one of the leaders

of the Federalist party, who had just been nominated by Washington as Chief Justice of the Supreme Court, were only a few of the prominent men of the country who took part in meetings which denounced the treaty, sometimes in terms of unmeasured severity.

Early in August, Washington received an urgent request from Timothy Pickering, who was made Secretary of War upon Knox's resignation, to come immediately to Philadelphia. In response to this request, he set out at once, arriving in Philadelphia August 11. He was immediately confronted by what seemed to be evidence that his Secretary of State, Edmund Randolph, had been engaged in corrupt negotiations with the French minister, Fauchet. The next day he called a meeting of his cabinet, as though nothing had happened, to consider the question of the ratification of the treaty. As all of the members of his cabinet except Randolph advised its ratification, accompanied with a remonstrance against the principle of the provision order, he decided to ratify it. Washington directed Randolph to prepare the memorial against the provision order, and also to draw up instructions to our minister in England for further negotiations. When this was done, the President called another meeting of the cabinet, and in the presence of Oliver Wolcott and Timothy Pickering he handed to Randolph a compromising despatch from Fauchet, and asked the Secretary of State to make such explanations

Fauchet's compromising despatch.

as he saw fit. Protesting that his conduct had been entirely free from any taint of corruption or impropriety, Randolph handed in his resignation the same day.* After offering the Department of State successively to William Patterson of New Jersey, Thomas Johnson of Maryland, Charles Cotesworth Pinckney of South Carolina, and Patrick Henry, all of whom declined it, the President offered it to Pickering, who accepted it. The portfolio of War, having been declined first by Edward Carrington of Virginia and then by Colonel Howard of Maryland, was finally accepted by a man of second-rate talents, James McHenry of Maryland. John Marshall and Colonel Innes having in turn declined to accept the office of Attorney-General—which was made vacant by the death of the incumbent, Bradford, shortly after Randolph's resigna tion—the position was given to Charles Lee of Virginia.† For the first time, the cabinet was solidly Federalist.

Randolph tenders his resignation.

* See Conway's Life of Edmund Randolph for an elaborate discussion of the evidence against Randolph, and Morse's Life of Washington for a refutation of the position that Washington had not decided to sign the treaty until he saw the Fauchet despatch.

† Charles Lee was a son-in-law of Richard Henry Lee, who died in 1794. Although at first a strong Antifederalist, he had become a decided Federalist, and with him the whole Lee family. Patrick Henry had also become friendly to the Administration.

We have here a vivid illustration of the difficulty which Washington had in inducing proper men to accept office. Professor Thorpe says (Constitutional History of the American People, 172): "Had he [Washington] refused the presidency, the national government might have failed for lack of men."

The British government made no objection to the suspension of the article relating to the West India trade, and the ratifications were accordingly exchanged in London, October 28, 1795. On March 3, directly after receiving the treaty from London, Washington proclaimed it the law of the land.

But it had a dangerous gauntlet to run before it was definitively settled that it was to be the law of the land. Pursuing the same course they had taken when Genet was trying to drive the government into submission to the will of France, the Republican papers denounced Washington more bitterly than ever. The "Aurora" charged him with violating the constitution, and declared that Louis XVI. had never dared to heap such insults upon his subjects as Washington had upon the American people by making a disgraceful treaty with a nation whom they despised. One writer declared that he had overdrawn his salary; another, that he had gone back to private life at the close of the war because the government offered no position that could satisfy his ambition; that his life of seclusion, his levees, his returning no visits, his state and his ceremony, his unrepublican habits, gave the lie to his oath to defend the constitution, the object of which was to provide a republican form of government.

Republican press attacks Washington.

All this was preliminary to a determined and persistent effort on the part of the House of Representatives

to defeat the treaty, which had already been proclaimed as the law of the land. In a letter to Rutledge, Jefferson, after denouncing it as an execrable thing, said: "I trustthe popular branch of the legislature will disapprove of it, and thus rid us of this infamous act, which is really nothing more than a treaty of alliance between England and the Anglomen of this country, against the legislature and the people." The Republicans had a double motive in desiring to have the House of Representatives rid the people of it: they not only wished to defeat what Jefferson called the alliance between England and the Anglomen, but also to extend the power of the House of Representatives. They felt that the great danger to Republican institutions in this country lay in the executive. With this idea they wished to enlarge as much as possible the power of the House of Representatives, "the popular branch of the legislature." Under the influence of these two motives, they entered upon what proved to be one of the fiercest struggles in which the two parties ever engaged.

House of Representatives and the treaty.

The fight began (March 2, 1796) with a resolution offered by Edward Livingston of New York, calling on the President for Jay's instructions and all the correspondence and documents relating to the treaty, excepting such as any existing negotiation might make it improper to disclose.

Livingston's resolution.

In the debate upon this resolution, Albert Gallatin, who was serving his first term as a member of the House of Representatives, arose to a position of real leadership in the Republican party. In a speech of great ability, he set forth the Republican theory of the treaty clauses of the constitution with a clearness and force that left nothing to be desired. Jefferson declared that it was worthy of insertion in the "Federalist" as the only rational commentary upon that part of the constitution. Gallatin contended that a treaty made by the President, by and with the advice and consent of two thirds of the Senate, is inchoate, that it does not become the law of the land until it receives the sanction of the House of Representatives. "To construe the constitution consistently, we must attend to all the sections of it. To interpret particular clauses of it by themselves invites absurdities. By one section it is declared that a treaty is the supreme law of the land, that it operates as a law; yet it is to be made by the President and Senate only. Here will be an apparent contradiction; for the constitution declares that the legislative power shall be vested in the three branches. By this construction there would appear to be two distinct legislatures. . . . If still it is insisted that treaties are the supreme law of the land, the constitution and laws are also; and, it may be asked, which shall have the preference? Shall a treaty repeal a law or a law a treaty? Neither of these can be done. A law

Gallatin's speech.

cannot repeal a treaty because a treaty is made with the concurrence of another party—a foreign nation—that has no participation in framing the law. . . . A treaty made by the President and Senate cannot repeal a law, because the House of Representatives have a participation in making the law. It is a sound maxim in government that it requires the same power to repeal a law that enacted it. If so, it follows that laws and treaties are not of the same nature "—that treaties are not laws and do not have the force of laws until they have received the sanction of both Houses of Congress. " Gentlemen had dwelt much on the clause of the constitution which declares that the constitution, laws and treaties made in accordance with it, are the supreme law of the land. But they had neglected to read the whole of the clause, and had thereby missed its obvious meaning. The intention was not to compare the constitution, laws and treaties with each other, but with the constitution and laws of the particular states; to declare whether the constitution, laws and treaties of the general government or the laws and constitution of the states are supreme in case of clashing powers." Livingston's resolution was carried by a large majority. Washington declined to give the papers, on the ground that the power of making treaties is vested exclusively in the President by and with the advice and consent of the Senate, and that it was the duty of the House of Representatives to make all necessary provisions for carrying them into effect. A few

days later (April 7), the House passed a resolution by a vote of fifty-seven to thirty-five declaring that it claimed no agency in making treaties, but that it claimed the right to deliberate upon the expediency of carrying into effect a treaty which contained regulations on the subjects which the constitution had committed to its care.

All this was preliminary skirmishing. The fight began in earnest (April 15) when the Federalists offered a resolution declaring that provision ought to be made for carrying the treaty into effect.

Some of the Republicans did not advocate an unconditional refusal to carry the treaty into effect. One of their leaders in the House, Albert Gallatin, defined his position with his usual clearness: "The further detention of our posts, the national stain that would result from receiving no reparation for the spoliations on our trade, and the uncertainty of a final adjustment of our differences with Great Britain, are the three evils which strike me as resulting from a rejection of the treaty; and when to these considerations I add that of the present situation of the country, of the agitation of the public mind, and of the advantages that would arise from a union of sentiments; however injurious and unequal I conceive the treaty to be, however repugnant it may be to my feelings and, perhaps, to my prejudices, I feel induced to vote for it, and will not give my assent to any proposition which would imply its rejection." * His posi-

Policy of the Republicans with reference to the treaty.

* Annals of Congress, 1795–6, 1196.

tion was that in view of the conduct of England since the negotiation of the treaty—her uninterrupted impressment of our citizens, and especially her seizure of our provision vessels, "a proceeding which they might, perhaps, justify by one of the articles of the treaty"—it was advisable to postpone the passage of laws necessary to carry the treaty into effect until definite assurances were received from England that she meant to treat us in a friendly manner.*

Fisher Ames' speech.

It was in the debate on this resolution that Fisher Ames made the great speech of his life. So feeble that he was hardly able to stand, he disregarded the advice of his physician, and determined to make an effort in behalf of what he regarded as the salvation of his country. He declared that the question which the House was debating was, "Shall we break the treaty, shall we violate a solemn engagement into which the nation has entered?" With solemn emphasis he urged that a government wantonly refusing to fulfil its engagements corrupts its citizens. "Will the laws continue to prevail in the hearts of the people when the respect that gives them efficacy is withdrawn from the legislators? To

* During the six years of Gallatin's service in Congress (1795–1801), the Republicans held but two meetings to deliberate on the course they should pursue. The first was called to consider the question as to whether they should vote appropriations to carry Jay's treaty into effect. In each instance the party was divided, and the minority was left free to vote as it pleased.—See Gallatin's Writings, III., 553.

weaken government and to corrupt morals are effects of a breach of public faith not to be prevented." When he portrayed the horrors that would be sure to follow a rejection of the treaty he moved his audience to tears. To reject the treaty was to reject the forts, and to reject the forts was to involve the frontiers in all the horrors of an Indian war. "We light the savage fires, we bind the victims. This day we undertake to render account to the widows and orphans whom our decision will make—to the wretches that will be roasted at the stake." But war with the Indians was not the only or the worst result which seemed to Fisher Ames an inevitable result of rejecting the treaty. War with England, anarchy and confusion at home, would be, he believed, its inevitable results. "Even the minutes I have spent in expostulating," he said in closing, "have their value, because they protract the crisis, and the short period in which alone we may resolve to escape it. Yet I have, perhaps, as little personal interest in the event as any one here. There is, I believe, no member who will not think his chance to be a witness of the consequences greater than mine. If, however, the vote should pass to reject, and a spirit should rise, as it will, with the public disorders to make confusion worse confounded, even I, slender and almost broken as my hold on life is, may outlive the government and constitution of my country."

When he sat down there was scarcely a dry eye in the House. John Adams sat weeping in the gallery and

ejaculating, "My God! how great he is!" His speech, backed by the letters and petitions which were pouring into the House from the commercial interests, decided the question, and the resolution to carry the treaty into effect passed by a vote of fifty-one to forty-eight.

Hamilton's advice as to the course to be taken in case the House refused the appropriations necessary to carry the treaty into effect is suggestive. In a letter to Rufus King, April 15, 1796, he said that in the event of the refusal of the House the President ought to send them a solemn protest, and that the Senate ought to assure him of their firm support, and advise him to proceed in the execution of the treaty; that the President ought to cause a confidential communication to be made to the British minister, declaring his determination to persist in the execution of it, so far as it depended on the executive. "In all this business, celerity, decision, and an imposing attitude are indispensable. The glory of the President, the safety of the constitution, the greatest interests depend upon it."*

Hamilton's advice.

Upon one of the questions at issue between the Republicans and Federalists, the constitutional right of the House of Representatives to refuse the appropriations necessary to carry a treaty into effect, the Supreme Court has pronounced in perfectly clear language. In 1888 that tribunal declared that "A treaty is, in its

A decision of the Supreme Court as to the rights of the House in relation to treaties.

* Works, VIII., 391, 392.

nature, a contract between nations, and is often merely promissory in its character, requiring legislation to carry its stipulations into effect," and that such legislation is "open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of Congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of Congress. In either case, the last expression of the sovereign will must control." *

When, in 1868, the same question came again before the House in connection with the purchase of Alaska, the Administration definitively abandoned the position taken by the Federalists in 1796. It conceded the right of the House not only to call for papers and deliberate on the merits of the treaty, but even to refuse appropriations if the treaty, in the opinion of the House, was inconsistent either with the constitution or with the established policy of the country.†

The decision of the House in 1868 with reference to treaties.

On another question upon which the parties were divided, the expediency of rejecting the treaty in order to compel England to respect our rights by laying restrictions upon her commerce, history has pronounced with a degree of clearness rarely found in its pages. In

Expediency of rejecting the treaty in order to have recourse to commercial restrictions.

* 130 United States Supreme Court Reports, 600.

† Speech of N. P. Banks, June 3, 1868. Congressional Globe, Vol. LXXV., Appendix, 385.

1806 the relations between this country and England were substantially the same as they were in 1796. The Republicans then had their opportunity to see the futility of commercial restrictions as a means of compelling England to respect our rights.

The general policy of ratifying the treaty.

But upon the question as to whether the Federalists elected wisely between what they rightly regarded as the two most feasible alternatives—Jay's treaty and war—the verdict of history remains suspended. If Jay had refused to sign a treaty which made us a party to England's attempt to starve our former ally, and which left England free to continue her impressment of American citizens and her confiscation of American ships which were engaged in trading with the colonies of France, or if, having signed it, the American government had refused to ratify it, and if the British government had been informed that the frontier posts must be evacuated in accordance with the provisions of 1783,—war would have been the almost certain result. But it is difficult to believe that a war in 1796 would not have resulted at least as favorably to this country as the war fought sixteen years later. The little navy which gave so good an account of itself in the War of 1812 had not indeed been created in 1796; but the privateers, which contributed almost as much to give this country a reputation as a sea power, would doubtless have acquitted themselves as well. And it is hard to believe that

armies directed by the energetic administrations of Washington and Adams would have suffered the almost disgraceful reverses that fell upon the American armies in 1812 and 1813. It is equally difficult to believe that a war in 1796 would not have been supported by the whole country to a greater extent than was the War of 1812. An administration at the head of which were Washington and Hamilton would have received at least the lukewarm support of the New England Federalists. And although the Republican leaders would doubtless have attempted to make themselves and their followers believe that the object of the war on the part of the Federalists was to enlarge the powers of the central government, they could hardly have had much success, especially since one of the results of the war would have been to bring the United States and France into practical alliance.

On the whole, when the reasons for and against war were so evenly balanced, one cannot help regretting that Washington did not elect to take the bolder course: that he did not reject a treaty which made us a party to the attempt of England to starve out our old ally in the hour of her need, to say nothing of its other offensive features—especially since, as we now know, nothing less than war was able in the end to secure from England the respect due to an independent power.

It is indeed true that we were heavily in debt; that we would have been compelled to borrow money; that

the resources of the whole of Europe would have been closed to us; that we were without either a land or a naval force; that we were deficient both in arms and ammunition; that our commerce was largely dependent on England; and, worst of all, that there were within the United States determined enemies to the constitution, whom war would have given the best possible opportunity to make their enmity fatal. These considerations made it perfectly proper for the Administration to regard war as a calamity not to be encountered except in the very last resort; perhaps proper to ratify such a treaty as Jay's rather than consent to it. It would be unfair to criticise the Administration from our standpoint—to hold it responsible for not knowing what we now know, and for not having adjusted its actions accordingly. And it must be borne in mind that the conduct of France in relation to this country very much weakened the obligation upon us to have regard to the French republic in our relations with England. The conclusion, then, on the whole would seem to be that, while in view of what we know to have been the actual course of events it would probably have been wiser for the Administration to have taken the bolder course, and have demanded as a right the evacuation of the frontier posts, from the point of view of all the facts accessible to the Administration the course decided on was dictated by an enlightened regard to the best interests of the country.

But it is hardly open to question that the reason of most weight with the Federalists in opposing every measure that might lead to war with England was that such a war would not only throw this country completely into the arms of France, but that it would put in power the same anarchical elements in the United States that had deluged France with blood. Says Marshall: "That war with Britain, during the continuance of the passionate and almost idolatrous devotion of a great majority of the people to the French republic, would throw America so completely into the arms of France as to leave her no longer mistress of her own conduct, was not the only fear which the temper of the day suggested. That the spirit which triumphed in that nation, and deluged it with the blood of its revolutionary champions, might cross the Atlantic, and desolate the hitherto safe and peaceful dwellings of the American people, was an apprehension not so entirely unsupported by appearances as to be pronounced chimerical. With a blind apprehension which treated reason as a criminal, immense numbers applauded a furious despotism, trampling on every right, and sporting with life as the essence of liberty; and the few who conceived freedom to be a plant which did not flourish the better for being nourished with human blood, and who ventured to disapprove the ravages of the guillotine, were execrated as the tools of the coalesced despots, and as persons who,

Why the Federalists adopted it.

to weaken the affection of America for France, became the calumniators of that republic. Already had an imitative spirit, captivated with the splendor, but copying the errors, of a great nation, reared up in every part of the continent self-created corresponding societies, who, claiming to be the people, assumed a control over the people and were loosening its bands." *

Appropriations were made in this session of Congress for carrying into effect treaties made with Spain and Algiers in 1795. The treaty with Spain was negotiated by Thomas Pinckney. It provided for a free navigation of the Mississippi to both parties throughout its entire extent. It also gave to the Americans a right of deposit at New Orleans for three years, at the end of which time the right was either to be continued at the same place or at some other convenient point on the bank of the river. By the treaty with Algiers, the United States agreed to pay $763,000, besides a yearly tribute in slaves of the nominal value of $24,000, in consideration of the release of the American captives and of peace for the future. The impatience of the Dey of Algiers at not receiving his money soon enough seemed to make it desirable to pacify him with the promise of a frigate, which made the treaty cost another hundred thousand dollars.

Treaties with Spain and Algiers.

* See also letter of C. Gore to R. King, August 14, 1798. Life and Correspondence of Rufus King, Vol. II.

CHAPTER XVI.

MONROE IN FRANCE.

EARLY in 1789, Gouverneur Morris went to France on private business. With a mind of extraordinary acuteness, with a temper cold and critical to the verge of cynicism, Morris was utterly lacking in that optimistic temper which was an essential condition of enthusiastic devotion to the French Revolution. Sprung from a family which for generations had been the possessors of large wealth, he found it easy to remember what it was hard for enthusiastic devotees of republicanism not to forget: that with all of the oppressions of which the French nobles had been guilty, it was the system of which they were the product which was primarily responsible, and, above all, that Louis XVI. had acted a part towards us in our struggle for independence which it would be ungrateful to forget.

Gouverneur Morris' political character.

It was natural, therefore, stranger though he was, for Morris to take an active part in behalf of the French king. He submitted a memoir to Louis XVI. which contained this statement: "A king should never forget that he is accountable only to God." *

Early in 1792, he was nominated as minister to France. The Senate confirmed him by a narrow

* Sparks' Gouverneur Morris, II., 512.

majority, eleven votes having been cast against him to sixteen for him. When he received his credentials as minister of the United States, he was engaged in arranging the details of a plan to enable the French king to escape from his capital. But his greatest offence in the eyes of the Republicans in France and the United States was his using the phrase "my court" in speaking of the American government. When, therefore, the American government asked the recall of Genet, the French government asked the recall of Morris.

Morris nominated minister to France.

Determined to select a man who would be acceptable to the French republic, Washington nominated as Morris' successor James Monroe, one of the senators from Virginia. Monroe was an extreme Republican. He had opposed the adoption of the constitution, had voted to reject Morris' nomination as minister to France, and had strongly opposed the mission to England.*

Monroe appointed his successor.

Washington well knew that he was running a risk in appointing Monroe as minister to France. In two separate paragraphs Monroe was warned by his instructions not to forget the dignity of the United States.† But the attempt to restrain such enthusiasm as Monroe's within the cold confines of prudence was as futile as would be an attempt to dam up

Monroe's character.

* Monroe's View of the Conduct of the Executive, 1.

† State Papers: Foreign Relations, I., 668, 669.

the Mississippi. Believing with all his soul that France was fighting the battles of the human race, it was impossible for Monroe not to regard the interests of France and of the United States as identical. His whole career there shows that he accepted the mission to France not so much to represent the interests of the United States as a country with different interests from France, but as the common representative of both peoples,—as though, when the United States and France became republics, the customary caution of diplomacy might be laid aside; as though it was impossible for the government of one republic to take advantage of another; as though by becoming a citizen of a republic a man could slough off the inherent selfishness of his nature!

It was true that in the very month of June when Monroe received his instructions the wild carnival of the red-handed Terror was at the very height of its madness; that the Revolution which had begun its existence by proclaiming the rights of man had trampled them under foot with a ruthlessness never surpassed in history: but it had committed its crimes in the name of "liberty, fraternity, and equality," and Monroe, in common with many abler men, was profoundly convinced that the enemies of liberty within and without France were entirely responsible for all of the apparent despotism of the French republic.

There was indeed nothing in the facts of the situation to prevent an American minister to France—in August, 1794, when Monroe reached Paris, and when the Reign of Terror had not run its course—from believing that the ultimate outcome of the French Revolution would be good. Without softening a single feature of the hideous despotism that still held sway in France, without underestimating in the slightest the terrible impetus which that despotism had imparted to the anarchical elements of society the world over, there were reasons enough to justify an American minister in believing that it was worth while to pay this price, high as it was, to rid France, and subsequently all Europe, of the oppressions of an obsolete, worn-out system that was crushing the life out of entire peoples, and had been for centuries. But a man who had a right to this conclusion, who had reached it only after looking steadily and impartially at both sides of the terrible question, who believed in the French Revolution not because he did not realize the crimes which it had committed, but because he realized the greater crimes which had provoked it, should also have realized that the selfishness which leads to the oppressions of monarchical governments does not leave men when they become citizens of a republic; that a nation cannot immediately change the character of its citizens, by changing the form of its government; that there is no short cut to the Golden Age.

An estimate of the French Revolution.

Monroe had, besides, quite special reasons for guarding himself against the fallacy that the American republic could blindly trust its interests in the hands of the republic of France. Upon his arrival in Paris—according to his own account—he found "our affairs in the worst possible condition. . . . The treaty between the two republics was disregarded. Our commerce was violated in every quarter, and in every article, even that of tobacco not excepted. Our seamen, taken on board our vessels, were often abused, generally imprisoned, and treated in other respects like the subjects of powers at war with them."*

Relations between France and the United States.

As early as May 9, 1793, the French National Convention had passed a decree which authorized ships of war and privateers "to seize and carry into the ports of the republic merchant-vessels which are loaded wholly or in part with provisions, being neutral property, bound to an enemy's port, or having on board merchandise belonging to an enemy." And although, a few days later (May 23), a decree was passed which declared that the first law was not to apply to the United States, still, by a later decree (July 27), the second law was repealed, which left the commerce of the United States exposed to all the interruptions and vexations to which, by the first decree, the commerce of all other neutral nations was

Anti-neutral decrees of the French government.

* State Papers, I., 694.

exposed,—and that, too, in spite of the fact that the first decree was in direct violation of explicit provisions of the treaties between the United States and France.*

But neither his instructions nor the situation sufficed to cool the ardor of Monroe. Being of the opinion that the Committee of Public Safety, to whom the executive functions of the republic chiefly belonged, was disposed to delay his reception, he addressed a letter (August 14), directly to the Convention, requesting it to fix the day and prescribe the mode in which he should be acknowledged "as the representative of their ally and sister republic." † The Convention immediately passed a decree declaring that he should be "introduced into its bosom" on the following day. Upon his introduction to that body he presented a written address in which he said to the government of the most absolute despotism of modern times that it was similar to the government of the United States, since both cherished the same principles and rested on the same basis—"the equal and inalienable rights of man"! ‡

Monroe's reception.

As soon as Monroe was publicly recognized, he found himself beset by Americans, hoping through him

* The decree of May 9, repealed as to the United States May 23, was again enforced under certain conditions May 28, repealed again July 1, and again enforced July 27.—Lyman's Diplomacy, 326.

† State Papers: Foreign Relations, I., 673.

‡ Ibid., 674, 688.

to receive compensation for injuries which they had sustfered at the hands of the French republic. Some of them had been injured by an embargo at Bordeaux, by which a hundred American vessels had been detained for more than a year. Some had claims upon the republic for supplies sold to the government of San Domingo. Some had brought in cargoes for sale and had been detained upon one pretext or another; and others had received injuries not merely in violation of the general principles of international law, but of specific articles of the treaties of 1778. In a letter addressed to the Committee of Public Safety September 3, 1794, he urged the case of the last class on a ground that at least must be conceded to be unique. After stating that specific articles of the treaties of 1778 had been violated, he said: "It is my duty to observe to you that I am not instructed to complain of or request the repeal of the decree authorizing a violation of the articles of the treaty which secured the mutual right of carrying enemy goods and enemy commerce. On the contrary, I well know that if upon consideration, after the experiment made, you should be of the opinion that it produces any solid benefit to the republic, the American republic and my countrymen in general will not only bear it with patience, but with pleasure."*

Americans claim compensation for injuries at the hands of France.

Monroe's letter to the Committee of Public Safety.

* State Papers, I., 677.

In his "View of the Conduct of the Executive" (8, 9), Monroe explains how he came to make this remarkable statement: "I examined again and again my instructions, and was finally of the opinion they did not contemplate the demand. But yet I was unwilling to suffer the impressions which the manner of my reception by the Convention had made upon the community at large to pass off without an effort to improve it to advantage. . . . I was persuaded that the way to turn that impression to the best account was to make a liberal and generous appeal on our part to like motives on theirs. Upon this principle, therefore, . . . the clause was drawn." And then he added a statement in which he drew his political portrait with a clearness that leaves nothing to be desired: "By this, however, I do not wish to be understood as having been guided by political motives only in expressing the sentiments contained in that clause; *on the contrary, I admit they were strictly my own;* affirming, at the same time, that they would never have been expressed had I not been satisfied they were such as it was honorable for the United States to express. . . . " Diplomacy in such a spirit would have been appropriate in the garden of Eden; but in the Paris of 1794—!

Monroe's explanation of his conduct.

Monroe knew how strenuous was the determination of the Administration to maintain an attitude of strict neutrality between France and England, and that lend-

ing money to a belligerent was a violation of neutrality. Nevertheless, when a committee of the French government asked him whether funds could be obtained from the United States for carrying on the war against the enemies of France, he replied (November 13) that although he had no authority to answer that question, he was sure that if it was in the power of the United States such aid would be rendered. And then he plainly stated his opinion that such aid would be the more certainly given if France would guarantee to make no peace with England or Spain as long as the complaints of the United States against them had not been settled.*

Monroe intimates that the United States will lend money to France.

In a letter to the Department of State, he said that the partiality of France for the United States was so great (how great that partiality was he himself learned later!) that if France could decide whether the United States should go to war with England, "they would leave us to act in that respect according to our wishes. And I am likewise persuaded, if we embark in the war, they will see us through it. I have some hope, if we do not, and especially if we aid them in the article of money, that they will support as far as they are able our demands upon Spain and England." †

He recommends his government to lend France money.

* State Papers, I., 686, 687. † Ibid., 688.

His instructions had authorized him to say that the motives of Jay's mission were to obtain "compensation for our plundered property and restitution of the posts," and also to declare that Jay was "positively forbidden to weaken the engagements between America and France." With this as authority, he assured the French government in the most positive manner that Jay's mission "was strictly limited to demanding reparation for injuries."* When he learned that Jay had actually negotiated a treaty, he felt obliged to give the French Committee of Public Safety the information (December 27), and promised to give them a copy of the treaty as soon as he got possession of it. Six weeks later (February 12, 1795), he wrote that if the United States could keep the confidence of the French republic unimpaired, "by accurate penetration" he was confident that there was "no service within its power that the French republic would

How he interpreted his instructions.

*Upon this point it is impossible to acquit the Administration of a share of the blame. Monroe should have been appointed upon the theory that, in spite of his extreme opposition to the Administration, he could be trusted to carry out its policy, or he should not have been appointed at all. To appoint him and yet distrust him; to appoint him and at the same time withhold from him a full knowledge of all matters coming within the scope of his duties, was inconsistent, to say the least. The course of the Administration was doubtless due to Washington's intense desire to make appointments without regard to parties, coupled with his instinctive feeling that Monroe could not be trusted with the knowledge of all of the plans of the Administration.

not render to us."* Before it heard of Jay's treaty the indications of this disposition were extremely strong; "for at that time I had reason to believe that it contemplated to take under its care and provide for our protection against Algiers; for the expulsion of the British from the western posts, and the establishment of our right with Spain to the free navigation of the Mississippi, to be executed in the mode we should prefer, and upon terms perfectly easy to us; terms, in short, which sought only the aid of our own credit to obtain from our bank an inconsiderable sum to be laid out in the purchase of provisions within our own country, and to be reimbursed, if possible, by themselves. But by that intelligence this disposition was checked. I am still inclined to believe that if the arrangement with England, or the negotiation with Spain, should fail, it is possible to accomplish the whole through the means of this government."

Shortly after signing the treaty, Jay had written to Monroe promising to communicate its principal points. Monroe sent a confidential person to Jay to obtain such information of the treaty as Jay might see fit to give, since it was of the greatest consequence, so Monroe wrote, to remove all doubts as to its contents on the part of the French government. "It is necessary, however, to observe that as nothing will satisfy this government

Monroe wishes to communicate Jay's treaty to the Committee of Public Safety.

* State Papers, I., 695.

but a copy of the instrument itself and which, as our ally, it thinks itself entitled to, it will be useless for me to make it any new communication short of that."* Jay's reply, February 5, 1795, presents an admirable light in which to study the career of Monroe. "You must be sensible that the United States have an unquestionable right to make any pacific arrangements with other powers which mutual convenience may dictate provided these arrangements do not contradict or oppugn their prior engagements with other states. Whether this adjustment was consistent with our treaty with France, struck me as being the only question which could demand or receive the consideration of that republic, and I thought it due to the friendship subsisting between the two countries that the French government should have without delay the most perfect satisfaction on that head." He then stated that he had already given what he had hoped would be satisfactory information on that point, and quoted the clause in the treaty which provided that nothing in it should be construed contrary to existing engagements with other sovereigns or states. "Considering that events favorable to our country could not fail to give you pleasure"—was he intentionally sarcastic, or did he understand that, from Monroe's point of view, nothing could promote the interests of the United States that did not promote the interests of France?—"I did intend to

Jay's letter to Monroe.

* State Papers, I., 517.

communicate to you concisely some of the most interesting particulars of this treaty, but in the most perfect confidence, as that instrument has not yet been ratified, nor received the ultimate forms necessary to give it validity. As further questions respecting parts of it may yet arise, and give occasion to further discussions and negotiations, so that if finally concluded at all it may then be different from what it now is, the impropriety of making it public at present is palpable and obvious. . . . It does not belong to ministers who negotiate treaties to publish them even when perfected, much less treaties not yet completed and remaining open to alteration or rejection. Such acts belong exclusively to the governments who form them. I cannot but flatter myself that the French government is too enlightened and reasonable to expect that any consideration ought to induce me to overleap the bounds of my authority, or be negligent of the respect which is due to the United States. That respect, and my obligation to observe it, will not permit me to give without the permission of this government a copy of the instrument in question to any person, or for any purpose; and by no means for the purpose of being submitted to the consideration and judgment of the councils of a foreign government, however friendly."* But what seemed "palpable and obvious" to Jay was not obvious to Monroe; expectations which Jay thought the French government too enlightened and reasonable to entertain

*State Papers, I., 517.

were entertained by Monroe. For Monroe had "gained such an insight into their councils" "as to be satisfied" that "all our great material objections, so far as they were connected with this republic, were more easily to be removed by a frank and liberal deportment than a cool and reserved one." Nor did he "see any condescension in such a line of conduct. . . . On the contrary, between nations allied as we are I deem it the most magnanimous as well as the soundest policy." When at last he received a slight sketch of the treaty, he at once submitted it to the Committee of Public Safety. Writing to the Department of State September 10, 1795, —he had received no letter from Randolph since May 31, and therefore did not know that Jay's treaty had already been ratified,—he was still of the opinion that a "timely and suitable attempt" could engage the aid of France "in support of our claims upon England, . . . upon fair and honorable terms." Nor did he see any objections to such an arrangement. "If we were at war with England, none would be urged by any one; if then, remaining at peace, another country is willing to give us the fortunes of its arms, in support of our claims against a common enemy, ought we to decline an arrangement which would be adopted in war, especially when it is considered that peace is the lot we prefer, and that our success depends upon its success? But can we accomplish what we wish by the fortunes of France, by any kind of negotiation we can set on foot, without any

effort of our own; and if such effort is made, of what kind must it be? To this I can give no answer other than by referring you to my former letters on that head. But to secure success by embarking this government with full zeal in our behalf, and striking terror into England, it will be necessary to lay hold of her property within the United States, take the posts, and even invade Canada. This would not only secure to us completely our claims upon Britain, and especially if we likewise cut up her trade by privateers, but, by making a decisive and powerful diversion in favor of France, promote, and very essentially, a general peace."*

Monroe proposes the invasion of Canada.

But when at last Monroe received a letter from Timothy Pickering (December 1) informing him that the treaty had been ratified by the Senate and signed by the President, and instructing him as to the defence of it which he was to make to the French government, he was placed in an embarrassing position. Filled with the enthusiasm for "liberty, fraternity, and equality," which was "potent enough to drive even wise men into madness," it had been impossible for him to take any but the French view of the relations between the United States and England, or to interpret his instructions from any other standpoint. From such a point of view, he had honestly believed that the object of Jay's mission was to demand

Explanation of Monroe's career in France.

* State Papers, I., 721.

satisfaction for injuries. With his passionate wish for the success of France, with his intense feeling that she and the United States alone represented the cause of liberty against kings, he had naturally taken the government of France into his entire confidence, and done all that he could do to prepare her to fight the battles of the United States which he was sure would have to be fought by some one. His instructions had reminded him to keep steadily in view the fact that he was to maintain the self-respect of his own government. But were not France and the United States, the two republics of the world, each founded on the doctrine of the inalienable rights of man? For one of these to accept favors of the other was no more to do violence to its self-respect, from Monroe's point of view, than it is for one sister to accept favors from another. They were allies not merely by treaty but in spirit, each engaged in a holy crusade for liberty. It was in such a spirit that Monroe had entered upon his mission, and attempted to do its work. But when he was confronted with the fact that to demand reparation for injuries was not the sole object of Jay's mission; when he was informed that a treaty had been made, and when he learned that it had been ratified by the Senate and signed by the President; when he realized that he had been unwittingly deceiving the French government and unintentionally misrepresenting the object of Jay's mission, it was impossible for him to see that the source of it all lay in his own enthusiasm, in his inability

to take a cold, judicial, impartial view of his instructions, and of the relations between the United States and England on the one hand, and the United States and France on the other. He believed that his own government had wilfully deceived him in order that, through him, it might deceive France. He believed that his appointment was a part of an elaborate system which was intended to array the United States on the side of "kings against the people." He asked himself what he should do. Should he withdraw from his position without making any explanations? Should he withdraw and explain to the public the grounds of his conduct, or should he stay where he was, and do what he could to promote in his own way the objects of his mission? He resolved upon the last course, and with the more confidence because he believed that the Administration was likely to recall him and give him thereby additional data for putting its conduct before the world in its true light. With such objects in view, he remained at his post until he was recalled in 1796, when he returned to this country to write a pamphlet to prove that the Administration of which Washington was at the head had wilfully deceived him, in order that it might betray the cause of liberty.*

Monroe's opinion of the Administration.

Perhaps the sharpest criticism on his career in France ever made is found in a paragraph in Washing-

*See conclusion of the "View."

ton's Farewell Address given to the American people the very month in which he recalled Monroe. "Constantly keeping in view that 'tis folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet with being reproached with ingratitude for not giving more, there can be no greater error than to expect or calculate upon real favors from nation to nation. 'Tis an illusion which experience must cure, which a just pride ought to discard."

Washington's Farewell Address.

An apologist of Monroe, W. H. Trescott (American Diplomatic History, 167), says that "Mr. Monroe had really done effectual service during his mission. He had conciliated the temper of the French government, carried out three of the four points which were committed to his care, and without doubt delayed the expression of French discontent for a long time."

Trescott's defence of Monroe.

It is doubtless true that Monroe did conciliate the French government, and that he did delay the expression of French discontent. But by what means? By giving the French government the impression that the American republic was willing to accept the rôle which French diplomacy had been determined to assign it from the outbreak of the war with England: the

rôle of a nation whose foreign policy was to be determined at Paris.

Up to the time of the conversation about loans, Monroe had made no progress towards inducing France to respect the rights of the United States. His touching letter of September 3 had made no impression upon the hard-headed members of the Committee of Public Safety. But as soon as he gave them reason to believe that they could borrow money in the United States there was a sudden change. A decree was immediately passed (November 18) ordering the Commissary of Marine to "adjust the amount due to our citizens on account of the Bordeaux embargo," and also for supplies rendered to the government of St. Domingo. The same decree repealed the law by which provisions had been treated as contraband of war. A few weeks later another decree was passed declaring that there should be put in execution the article in the treaty of 1778 which provided that free ships should make free goods. With characteristic naïveté, Monroe was sure that this action of the French government was entirely due to its republican affection for the United States, an affection which was willing to go to any lengths in favor of this country, once he had succeeded in convincing the French government of the good wishes of our Administration for the French nation and its Revolution.*

* Monroe's View, 73.

If Monroe had induced the French republic to take these steps by presenting the claims of his government in a manly and dignified way, he would have deserved congratulations for his success. But when—in effect, though by no means in intention—he bribed the French government to do us justice by committing his government, so far as lay in his power, to the French cause, by inducing the French government to believe that the American government was willing to abandon the position of neutrality which it maintained with such labor, his conduct deserves unqualified censure. It is doubtless true that he was patriotic, that his motives were pure. But this only proves that in diplomacy, as well as in every other department of life, something more than good intentions is essential to intelligent conduct.

CHAPTER XVII.

THE EXTRA SESSION OF 1797.

JOSEPH FAUCHET, who succeeded Genet as minister from France to the United States in 1794, comported himself with comparative propriety. But Adet the minister, who came to this country from France in the summer of 1795, did not conduct himself with so much moderation.

Adet had, however, profited by Genet's experience. He had learned that he could not drive the American government out of the path it wished to pursue, and that the people could not be alienated from their government. He therefore resolved to employ different measures to reach the same end. He resolved to take a hand in the presidential election. Accordingly, he wrote letter after letter to the American Secretary of State, and sent at the same time a copy to be published in the Democratic "Aurora." In the space of three weeks, four of his communications appeared in that paper. The first, written October 27, 1796, reported a decree of the French government to the effect that France would treat the ships of neutrals in precisely the same way in which they permitted themselves to be treated by England.

Adet attempts to influence the presidential election.

The most remarkable of these letters was the fourth (November 15, 1796). In this he demanded "in the name

of American honor, in the name of the faith of treaties, the execution of that contract which assured to the United States their existence, and which France regarded as the pledge of the most sacred union between two peoples, the freest upon earth." Determined to leave no doubt of his meaning, he added: "In a word, the French minister announces to the Secretary of State the resolution of a government terrible to its enemies, but generous to its allies." In melodramatic fashion he contrasted the warmth of the affection of France for America with the coldness of the American government towards France. "When Europe rose up against the republic at its birth, menaced it with all the horrors of war and famine; when, on every side, the French could not calculate upon any but enemies, their thoughts turned towards America. . . . In America they saw friends. Those who went to brave tempests and death upon the ocean forgot all dangers in order to indulge the hope of visiting that American continent where, for the first time, the French colors had been displayed in favor of liberty. Under the guarantee of the law of nations, under the protecting shade of a solemn treaty, they expected to find in the ports of the United States an asylum as sure as at home; they thought, if I might use the expression, there to find a second country. The French government thought as they did. O hope, worthy of a faithful people, how hast thou been deceived! So far from offering the

French the succors which friendship might have given without compromising it, the American government, in this respect, violated the faith of treaties."

Then followed an enumeration of the alleged violations: the circular of 1793 (August 4) prohibiting the fitting out of privateers in American harbors; the law of June, 1794, which made any violation of neutrality an offence punishable by fine or imprisonment; and the admission into American waters of British vessels which had made prizes of French vessels, which, he contended, was a violation of the 19th article of the treaty of 1778, that no shelter should be given in the ports of the United States to ships which had made captures "of the subjects, people, or property of France." But the American government wished, Adet continued, to secure to England by a positive contract the advantages which had been accorded her by the United States in violation of the treaties with France. "Such was the object of Mr. Jay's mission; a negotiation enveloped, from its origin, in the shadow of mystery, and covered with the veil of dissimulation. . . . All that could render the neutrality profitable to England and injurious to France is combined in this treaty." After pointing out that the United States granted to England a right which the American government had refused to other nations with which it had made treaties—the right of seizing on board "their vessels articles proper for the construction and equipment of vessels," and of treating pro-

visions as contraband of war—Adet said: "Having consented to such conditions, the American government cannot pretend to impartiality. . . . The undersigned minister plenipotentiary moreover declares that the executive directory regards the treaty of commerce concluded with Great Britain as a violation of the treaty made with France in 1778, and equivalent to a treaty of alliance with Great Britain; and that they have given him orders to suspend from this moment his ministerial functions with the federal government." But the French government was careful not to alienate the French party in the United States. Adet therefore did not neglect to make what was intended to be a touching appeal to the Republicans, in which they were assured that the suspension of his functions was not to be regarded as a rupture between France and the United States, "but as a mark of just discontent, which is to last until the government of the United States returns to sentiments and to measures more conformable to the interests of the alliance and the sworn friendship between the two nations." *

The attempt of France to control the policy of the United States by influencing the presidential election resulted in failure. John Adams received seventy-one votes, and Jefferson sixty-eight. Adams was therefore elected President, and Jefferson Vice-President. Adams received the entire vote of New England, New York, New Jersey, and Delaware, one from Pennsylvania, seven

* State Papers, I., 580, 583.

from Maryland, one from Virginia, and one from North Carolina; Jefferson, all the votes of South Carolina, Georgia, Kentucky, and Tennessee, fourteen from Pennsylvania, four from Maryland, twenty from Virginia, and eleven from North Carolina. "A single voice in Virginia and one in North Carolina," says Charles Francis Adams, "prompted by the lingering memory of Revolutionary services, had turned the scale."

The attempt to separate the American people from their government was repeated (December 30, 1796) when the President of the French Directory replied to the speech which Monroe made when he presented his letter of recall. Monroe was told that *he* had combated for principles, that *he* had known the true interest of his country, but that France would not "stoop to calculate the consequences of the condescension of the American government to the wishes of its ancient tyrants."

The President of the French Directory replies to Monroe.

It was not Monroe the American, but Monroe the Republican and French partisan, whom the French government was complimenting. On the day after Charles Cotesworth Pinckney reached Paris as Monroe's successor (December 9), in company with the latter he waited upon the French Minister of Foreign Affairs, De La Croix, to present his credentials. On December 12, De La Croix notified Monroe that the Directory would not receive another minister from the United States until the grievances of

The French government refuses to receive Pinckney.

which France complained were redressed. Pinckney at once wrote to De La Croix inquiring whether it was the wish of the Directory that he should leave France immediately, or whether he should remain until he heard from the American government. De La Croix replied verbally through Pinckney's private secretary that since the recall of Monroe the Directory acknowledged no American minister, and that it was the intention of the French government that he should not remain in France. For his own justification Pinckney desired a written answer, but obtained none till February 3, 1797, when he was informed that he was rendering himself liable to arrest by staying in Paris in violation of the law which forbade strangers to reside in France without letters of hospitality. Pinckney at once asked for his passports and left for Holland.

When John Adams became President, he made no change in the cabinet of his predecessor. Timothy Pickering, whom Washington had appointed to succeed Randolph as Secretary of State in 1795; Oliver Wolcott, who had succeeded Hamilton as Secretary of the Treasury in February of the same year; James McHenry, who was appointed Secretary of War in January, 1796; and Charles Lee, who became Attorney-General in December, 1795, were all reappointed to their respective positions.

Adams' cabinet.

The two leading members of the cabinet, Timothy Pickering and Oliver Wolcott, differed from the Presi-

dent as to the course that ought to be pursued when Pinckney was insultingly driven from France. Intense believers in the theory that France represented anarchy, and that England was fighting for order and constitutional liberty, both of these men were quite as ready to find reasons for a quarrel with France as Monroe was to find them with England. They therefore urged that the United States had done enough.

Opinion of Pickering and Wolcott.

Fortunately, Hamilton agreed with Adams in thinking that a special mission should be sent to France. The decision of the French Directory not to receive another American minister until the grievances of which France complained were redressed, could not mean, Hamilton argued, that they would not receive a special mission. Moreover, if France did refuse to receive a special mission, the people would thereby be convinced that the government had done all that it could to make peace with France—a thing which was very desirable. By such arguments Hamilton succeeded in breaking down the opposition of Pickering and Wolcott.

Hamilton's opinion.

Hamilton thought that three envoys should be sent to France, and that one of them should be a conspicuous Republican, known to be acceptable to the French republic. He suggested Jefferson or Madison as the Republican member of the mission. Wolcott wrote that if Hamilton insisted on a mission, "either nothing will

be done or your opinion will prevail," * but he could not bring himself to consent to the nomination of Jefferson or Madison.

When Pinckney's despatches describing his treatment reached the United States, Adams issued a proclamation calling a special session of Congress. Congress met accordingly, May 15.

Adams' speech to Congress.

In his opening speech, the President called special attention to the insidious attempts of the President of the French Directory, in his farewell remarks to Monroe, to separate the American people from their government. "Such attempts," he said, "ought to be repelled with a decision which shall convince France and the world that we are not a degraded people, humiliated under a colonial spirit of fear and sense of inferiority, fitted to be the miserable instruments of foreign influence, and regardless of national honor, character, and interest." At the same time, he declared his intention to send a new mission to France, since neither the honor nor the interest of the country forbade them to repeat their advances. He urged Congress to create a navy and to fortify the harbors of the United States, and to pass laws authorizing merchant-vessels to arm in their defence.

The attitude of the Republicans towards France, as appeared in the debate on the President's speech, bore a curious likeness to that of the Federalists towards Eng-

* Gibbs' Administrations of Washington and Adams, I., 448.

land. George Cabot, a leading and representative Federalist, wrote to Oliver Wolcott April 13, 1797, as follows: "He [Liancourt, a Frenchman travelling in this country] said the power of England was at an end. I rejoined that all the civilized world would have cause to mourn if this should be true, *for they would then be obliged to fight against France or to give up their independence.*" * In the debate on the President's speech, Nicholas, a zealous Republican from Virginia, after declaring that the insult to Pinckney was not so great after all, said, May 27: "It might, perhaps, be the opinion of some that he was improperly influenced by party zeal in favor of the French. . . . But where was the proof of the charge? On his first coming into this House, the French were embroiled with all their neighbors, who were endeavoring to tear them to pieces. Knowing what had been the situation of this country when engaged in a similar cause, he was anxious for their success. And was there not reason for this anxiety, when a nation contending for the right of self-government was thus attacked?—*especially since it was well known that if the powers engaged against France had been successful, this country would have been their next object?* Had they not the strongest proof in the declaration of one of the British colonial governors that it was the intention of England to declare war against America in case of the successful termination of

Opinions of Cabot and Nicholas contrasted.

* Gibbs' Administrations of Washington and Adams, I., 492.

the war against France?"* He concluded his speech by declaring that in ratifying Jay's treaty the United States had abandoned the position of neutrality, and given France just cause for complaining.†

The Federalists, in turn, declared that France was angry, not because of this or that article in the treaty, but because the United States had made any treaty with England. In a speech of great ability, Robert Goodloe Harper, a Federalist from South Carolina, declared that France was endeavoring "to effect by force and aggression that which she had attempted in vain by four years of intriguing and insidious policy"—to involve the United States in war with England by putting this country in a position in which it would have to choose between war with Great Britain and war with France.

The same contrast appeared in connection with the subject of impressment, the Federalists minifying, and the Republicans exaggerating, the extent to which American citizens suffered by it.

During the extra session of Congress (May 15—July 10, 1797) acts were passed prohibiting the fitting out of privateers against nations with whom the United States was at peace, or against citizens of the United States; forbidding the exportation of arms, and encouraging their importation; appropriating $115,000 for the further fortification of American

Acts of the extra session.

* Annals of Congress, 1797-9, 72.

† Cf. also Monroe's View of the Conduct of the Executive, 72.

harbors; apportioning to the states 80,000 militia to be ready to march at a moment's warning; and authorizing the completion and equipment of the three new frigates, "United States," "Constitution," and "Constellation." The Republicans opposed most of these measures. Besides their hostility to all laws that looked towards war, they objected to every act of legislation that tended to increase the expenditures of the government because of their habit of considering every measure, not from the standpoint of expediency, but from that of its capacity to be used as a precedent in undermining the liberties of the people.

Debate on appropriations for ministers to Prussia and Portugal.

This characteristic was strikingly shown in a persistent and bitter attempt in the regular session of Congress to defeat appropriations to support American ministers at the courts of Berlin and Portugal. One would naturally suppose that the primary question would have been whether the usefulness of ministers at those courts was likely to justify the expense. That question was, of course, raised by the opposition, but it was not considered on its merits. Nicholas, who opposed the appropriation with all his might (January 18, 1798), "thought it necessary to take a view of this subject not only from the increase of expense, but from a variety of other considerations." He conceived it to be "a duty they owed to themselves and their constituents, as well to secure liberty as to perpetuate the constitution itself,

that the President, who had the power of making appointments, should be kept from extending the power beyond what the nature and wants of the government absolutely required."*

Gallatin's speech.

In the course of the debate, Gallatin declared (March 1) that the House might lawfully refuse to make appropriations for what it deemed unworthy objects. Replying to the Federalist James Asheton Bayard—who had said that the executive was the weakest branch of the government, and therefore most in danger of encroachment—he said: "To such doctrines avowed on this floor, to such systems of government as the plan of government which the late Secretary of the Treasury proposed in the convention, may perhaps be ascribed the belief in a part of the community, the belief which was represented yesterday as highly criminal, that there exists in America a monarchico-aristocratic faction who would wish to impose upon us the substance of the British government."†

In the same speech he summed up with great accuracy the charges which the Federalists were constantly bringing, probably with absolute sincerity, against their opponents. "If we complain of the prodigality of a branch of the Administration or wish to control it by refusing to appropriate all the money which is asked, we are stigmatized as disorganizers; if we

* Annals of Congress, 1797–9, 849. † Ibid., 1138.

oppose the growth of systems of taxation, we are charged with the design of subverting the constitution and of making a revolution; if we attempt to check the extension of our political connections with European nations, we are branded with the epithet of Jacobins." And then he stated tersely and clearly the attitude of his own party: "Revolutions and Jacobinism do not flow from the line of policy we wish to see adopted. They belong exclusively to the system we resist; they are its last page, the last page in the book of the history of governments under its influence."*

In the same debate, the Federalist Harper said: "It is my firm and most deliberate opinion that the amendment now under consideration to refuse appropriations for the ministers to Portugal and Prussia, and the principle to which it belongs, lead directly to the introduction of anarchy and revolution in the country, and if not steadily opposed must sooner or later produce that effect."

From such different points of view, it was natural for the Republicans to underestimate the need of increased taxes, and for the Federalists to overestimate it. The one party was willing to run the risk of embarrassing the government in the interests of liberty; the other, of imposing unnecessary burdens on the people in the interests of order and good government. But, in spite of the opposition of the Republicans, laws were passed

* Annals of Congress, 1797-8, 1138.

increasing the duty on imported salt and imposing stamp duties. To the Republicans all schemes of internal taxation, as we have seen, were especially obnoxious, for they did violence to the very strong feeling of state patriotism which was especially characteristic of this party. The feeling that the state was the country of its citizens made all schemes of internal taxation by the federal government seem like taxation by a foreign power. Accordingly, they succeeded in postponing the operation of the new Stamp Act till January, 1798, and afterwards till the following June.

Before the close of the special session, John Marshall, Elbridge Gerry, and Charles Cotesworth Pinckney were appointed envoys extraordinary to France.

CHAPTER XVIII.

THE X, Y, AND Z MISSION.

THE President's selection of envoys for the French mission was fairly satisfactory to both parties. John Marshall and C. C. Pinckney were both moderate Federalists (Wolcott called Pinckney a man of neutral politics), and Elbridge Gerry was a moderate Republican. Jefferson wrote to him that his nomination "gave me certain assurance that there would be a preponderance in the mission sincerely disposed to be at peace with the French government and nation." *

Jefferson's letter to Gerry.

The envoys met in Paris October, 1797, at once notified Talleyrand, the French Minister of Foreign Affairs, of their arrival, and requested him to appoint a day for an interview. He replied that he was occupied with a report upon American affairs which was to be submitted to the Directory, and that he could not grant an interview until it was finished. A few days later (October 18), an unofficial agent from Talleyrand, M. Hottinguer (designated as X in the despatches transmitted to Congress), told them that the Directory was exceedingly irritated at some passages in the President's speech, and that these passages would have to be softened before the envoys couldbe received. But this was not all. So deep was

The Directory demands a bribe, and a loan to France.

* Writings of Thomas Jefferson (Ford's Edition), VII., 149.

the wound which had been inflicted upon their feelings that nothing could heal it except a *douceur* of $240,000 for themselves, and the loan to France of a considerable sum. Two more unofficial agents, M. Bellamy and M. Hauteval (designated as Y and Z in the despatches), shortly afterwards appeared upon the scene. Bellamy read the President's speech, and enlarged upon the resentment it had occasioned, and upon the "satisfaction" that was an indispensable preliminary to any negotiation. "But I will not disguise from you that, this satisfaction being made, the essential part of the treaty remains to be adjusted: you must pay money, you must pay a great deal of money."

France resolves to have no neutrals.

Hottinguer told them that since the peace with the Emperor of Austria, the Directory had taken a higher and more decided tone than before with respect to the United States and all other neutral nations; that it had resolved to have no neutrals—that nations who did not aid France should be treated as enemies. Reproving the Americans for conversation that he deemed irrelevant, he said: "Gentlemen, you do not speak to the point. It is money; it is expected that you will offer money." The Americans replied that they had spoken to that point very explicitly; they had given their answer. "No," said he, "you have not; what is your answer?" "It is, 'No, no; not a sixpence.'"

Hottinguer said that nothing could be done in France without money; that one of the members of the Directory was in the pay of the privateers; that Hamburg and other European states had been compelled to buy a peace, and that it would be for the interest of the United States to do so. He enlarged on the danger of a breach with France, on her irresistible power. The envoys replied that no nation esteemed her power more highly than the United States, or wished more ardently to be at peace with her. But there was one object still dearer to the Americans than the friendship of France, and that was their national independence. America had taken a neutral position; she had a right to take it. No nation had a right to force her out of it. For her to lend money to a belligerent power abounding in all the requisites of war but money, was to relinquish her neutrality and take part in the war; to lend this money under the lash and coercion of France was to relinquish the government of herself and submit to a foreign government imposed upon her by force. She would at least make one vigorous struggle before she thus surrendered her independence. *

To lend money under coercion a relinquishment of independence.

In another interview, Bellamy called the attention of the envoys to the situation of the United States, and to the force that France was capable of bringing to bear upon them. He warned the Americans that the fate of

* State Papers, II., 158, 160.

Venice might befall the United States. "You may believe," he said, "that in exposing to your countrymen the unreasonableness of the demands of this government, they will unite in resenting them. You are mistaken. You ought to know that the diplomatic skill of France, and the means she possesses in America, are sufficient to enable her, with the French party in America, to throw the blame which will attend the rupture of these negotiations on the Federalists, as you term yourselves, but on the British party, as France terms you, and you may rest assured this will be done." The envoys replied with equal freedom. They said that the United States had given the most unequivocal proof of their friendship for France when almost the whole of Europe—Austria, Germany, Prussia, Russia, Spain, Sardinia, Holland, and Britain—was leagued against her. But what was the conduct of France? "Wherever our property can be found she seizes and takes it from us; unprovoked, she determines to treat us as enemies, and our making no resistance produces no diminution of hostility against us. She abuses and insults our government, endeavors to weaken it in the estimation of the people, recalls her own ministers, refuses to receive ours, and when extraordinary means are taken to make explanations . . . the envoys who bear them are not received. They are not permitted to utter the amicable wishes of their country, but, in the haughty style of a master, they are told that

Diplomatic skill of France.

unless they will pay a sum to which their resources scarcely extend they may expect the vengeance of France, and, like Venice, be erased from the list of nations."*

On the 1st of November the envoys at last decided to hold no more indirect intercourse with the government. Ten days later, they wrote to Talleyrand reminding him of his promise to make known the decision of the Directory as soon as he had submitted his report on American affairs. After waiting nearly two weeks without receiving any answer, they sent Pinckney's private secretary, Major Rutledge, to inquire of Talleyrand whether he had submitted their letter to the Directory, and whether they might expect an answer. Talleyrand replied that he had submitted the letter, and that he would give the envoys notice when the Directory had instructed him as to the course he was to pursue. In the mean time, Hottinguer and Bellamy made repeated efforts to draw the envoys into further discussions. They, however, persisted in their resolution. But when Gerry (December 13), who had met Talleyrand in the United States, and who was under social obligations to that minister, said in the presence of Bellamy that he should like to wait on Talleyrand for the purpose of inviting him to dine, Bellamy at once proposed to accompany Gerry. The unscrupulous Frenchman improved

The envoys resolve to hold no more indirect intercourse with Talleyrand.

* State Papers, II., 163, 164.

his opportunity by again urging the importance of giving the bribe to the Directory and making the loan to France. He said that if nothing could be done by the envoys, arrangements would at once be made to ravage the coasts of the United States. Gerry replied that France might ravage their coasts, but could never subdue them. When they reached Talleyrand's office, Gerry remarked that Bellamy had just stated certain propositions as coming from Talleyrand. The latter replied that the information given by Bellamy was correct, and that he himself would state it in writing. He at once made a memorandum stating the form of the proposed loan, but after he had shown it to Gerry he burned it. The "customary distributions in diplomatic affairs" he did not mention, doubtless from motives of delicacy. *

The envoys finally (December 19) decided to write a letter to Talleyrand, and discuss the differences between the two countries, precisely as though they had been accredited.†

They wrote an able letter (January 17, 1798), but it could hardly have been deemed conclusive by any one who took the Republican view of the relations between France and the United States. Those who believed that the United States had not kept faith with France in the interpretation which it put upon the trea-

* State Papers, II., 167, 168. † Ibid., 169, 182.

ties of 1778; who believed that the article in Jay's treaty relating to contraband was a mean connivance in England's attempt to starve out France, could hardly have been convinced that in all particulars we had kept our engagements with France.

But perhaps the part of the letter which Republicans found most unsatisfactory was that which recounted the attacks which France had made upon the rights of the United States. The letter asserted that on the 9th of May, 1793, the National Convention had passed a decree which contained the following paragraph: "The French ships of war and privateers may stop and bring into the ports of the republic such neutral vessels as are loaded, in whole or in part, with provisions belonging to neutrals and destined for enemy's ports, or with merchandise belonging to enemies"; that although this decree was repealed (so far as it related to the United States) May 23, it was passed again on the 28th of the same month, and having been repealed in turn July 1, was again re-enacted July 27; that the claims of American citizens growing out of injuries which had been, and were being, inflicted when Monroe reached Paris, constituted a mass of debt which the justice and good faith of the French government could not refuse to provide for; that on July 2, 1796, the Directory had decreed "that all neutral or allied powers shall without delay be notified that the flag of the French republic will treat neutral vessels, either as to confiscation, searches, or

captures, in the same manner as they shall suffer the English to treat them"; that on March 2, 1797, considering Jay's treaty as making concessions to England, which, by the treaty of 1778, France was entitled to, it had proceeded to modify that treaty by declaring that enemy's goods in American vessels were liable to confiscation, and that merchandise *not sufficiently proved to be neutral* was also liable to confiscation; and by subjecting to punishment as a pirate any American seaman found on the ships of the enemies of France, whether he was there by his own consent or whether he was forced to be there through menace or actual violence; *

* It is an interesting fact that the Republican papers, which had found no language strong enough in which to characterize the British practice of impressment, had not a word to say against the French decree which so far surpassed it in atrocity. Joel Barlow, an American, who was then in Paris, wrote to his brother-in-law that this decree "was intended to be little short of a declaration of war. . . . The government here was determined to fleece you to a sufficient degree to bring you to your feeling in the only nerve in which your sensibility lay, which was your pecuniary interest." But what was probably merely a matter of opinion with Barlow became a certainty when the consul-general of the United States complained of the condemnation of two American vessels on the ground that they had no *rôles d'equipage*. (*Rôles d'equipage* were articles containing a list of the crew, signed by themselves, and countersigned by some public officer, or a national sea-letter, as a proof of the nationality of the vessel.) To this complaint Merlin, the French Minister of Justice, who was also a speculator in privateers, replied: "Let your government return to a sense of what is due to itself and its true friends, become just and grateful, and let it break the incomprehensible treaty which it has concluded with our most implacable enemies, and then the French republic will

that this decree also exacted papers from Americans which the treaties between the two nations had been supposed to render unnecessary, and which, accordingly, their vessels could not be supposed to possess. *

But the letter omitted to mention facts the consideration of which, from the Republican point of view, was essential to any just estimate of the conduct of the French government. Why was it, asked the Republicans, that the decree of May 9, finally confirmed by another passed July 27, remained in force for so many months? Because of the anti-French conduct of the Administration in America, and of its agent, Gouverneur Morris, in France. As soon as France was convinced by Monroe of the friendliness of the Administration she was eager to do us justice, as was proved by the decrees of November 18, 1794, and January 3, 1795. As to the decrees passed after the American government in effect repudiated its treaties with France by ratifying Jay's treaty,

Republican view of the letter.

cease to take advantage of this treaty, which favors England at its expense, and no appeals will then, I can assure you, be made to any tribunal against injustice."

* The requirement of these papers practically put every American vessel at the mercy of French privateers and ships of war. No such thing as a *rôle d'equipage* was required by American law, and no American vessel was provided with it. The requirement of a national sea-letter as the proof of the nationality of the vessel was a direct violation of the treaty of 1778. That treaty specified the form of passport which was to serve as a proof in time of war of the nationality of the vessels of the two countries.

they were the natural result of the conduct of the American government. Why should one party feel bound by a contract which the other breaks when it suits him? Such was the French, and also the Republican, view of the situation.

Before this letter was sent, the French made a new attack upon the commerce of neutrals, an attack more violent and outrageous than any of its predecessors. A decree was passed January 18, 1798, which forbade the entrance into any port of France of any vessel which at any previous part of her voyage had touched at any English port or the port of any colony of England, and declared that any vessel that had on board any merchandise which was the produce of England or her colonies was liable to confiscation.

Talleyrand's reply.

Talleyrand finally (March 18) replied to the letter of the Americans. His arguments need not detain us. They merely stated the French view of the situation, with which we are already familiar. But it must have required considerable hardihood in even Talleyrand to assert that the United States had omitted nothing to prolong the misunderstanding. He knew that after one American minister had been insultingly driven from France, the United States had sent three envoys extraordinary for the purpose of arranging, if possible, the difficulties between the two countries; that he himself had been the means of subjecting these envoys, and through them the government, to the

grossest insults; that these envoys, in their intense desire to restore amicable relations between the two countries, had ignored these insults, and patiently waited at the door of the French republic, vainly knocking for admission; that in spite of all these insults, and contrary to diplomatic usage, they had written a letter to the government that had refused to receive them,—as a man bent on peace might go to the house of his enemy, and, after urging him in vain to open the door, go to the window and shout through it in mild and conciliatory language the message of peace he had come to bring;—and yet the United States had omitted nothing to prolong the misunderstanding!

As though that were not audacious enough, Talleyrand dared to add that it was probably for that reason that it was thought proper to send to France as envoys "persons whose opinions and connections" were "too well known to hope from them dispositions sincerely conciliatory." "It is painful," he continued, "to be obliged to make a contrast between this conduct and that which was pursued, under similar circumstances, towards the cabinet of St. James'. An eagerness was then felt to send to London ministers well known for sentiments corresponding with the objects of their mission. The republic, it would seem, might have expected a like deference." But he did not show the boundlessness of his impudence until he said that the Directory was dis-

posed to treat with that one of the three whose opinions were presumed to be most impartial.*

Reply of the envoys.

In reply to Talleyrand's charge that the English sympathies of two of the envoys unfitted them to be ministers to France, they said: "The opinions and relations of the undersigned are purely American, unmixed with any particle of foreign tint. If they possess a quality on which they pride themselves, it is an attachment to the happiness and welfare of their country; if they could, at will, select the means of manifesting that attachment, it would be by effecting a real and sincere accommodation between France and the United States on principles promoting the interests of both, and consistent with the independence of the latter. All who love liberty must admit that it does not exist in a nation which cannot exercise the right of maintaining neutrality. If opinions and relations such as these are incompatible with 'dispositions sincerely conciliatory,' then indeed has the federal government chosen unfit instruments for the expression of its pacific disposition." In reply to Talleyrand's proposal to treat with Gerry, to the exclusion of the other two, they said: "The result of a deliberation on this point is that no one of the undersigned is authorized to take upon himself a negotiation evidently entrusted by

* State Papers, II., 188, 191. This letter was published in a Republican paper in Philadelphia before a copy of it reached the American government.

the tenor of their powers and instructions to the whole; nor are there any two of them who can propose to withdraw themselves from the task committed to them by their government while there remains a possibility of performing it."*

Disregarding this paragraph, Talleyrand, the very day the letter was presented (April 3), wrote a note to Gerry, of which the object was to bow Pinckney and Marshall out of the French republic. "I suppose, sir," he said, "that Messrs. Pinckney and Marshall have thought it useful and proper, in consequence of the intimations given in the end of my note, and the obstacles which their known opinions interposed to the desired reconciliation, to quit the territory of the republic. On this supposition, I have the honor to point out to you to the fifth or seventh of this decade to resume our reciprocal communications." † Gerry weakly consented to remain, although he insisted that he had no power to treat independently of his colleagues; that he could only confer informally and communicate the result to the United States. He afterwards excused himself for remaining, on the ground that Talleyrand had repeatedly threatened that his leaving Paris would be the signal for an immediate declaration of war by France against the United States.‡

Marshall and Pinckney dismissed.

* State Papers, II., 191, 199. † Ibid., 209.

‡ See Austin's Life of Gerry for an elaborate but futile attempt to defend Gerry's conduct. Nothing but the state of

But Gerry's consenting to remain did not prevent the French government from continuing to insult his two colleagues. Notwithstanding Talleyrand's desire to have Marshall leave, the American was unable to obtain a passport and safe-conduct until he had been subjected to repeated indignities. And it was only with great difficulty that Pinckney could get permission to stay for a few months in the south of France with a sick daughter.

public opinion in the United States prevents the perseverance of Marshall and Pinckney in their attempts to get a hearing from the French government from being exposed to severe criticism.

CHAPTER XIX.

THE ALIEN AND SEDITION LAWS.

THE Federalists and the Republicans had very definite opinions, not only of each other, but of the French government, when, early in March, the despatches were received which gave an account of the mission up to the close of 1797 and told how grossly the United States had been insulted. The Federalists believed, and rightly, that the one question which had been at issue between the two countries since Genet landed at Charleston in 1793 was this: Should the American people rule themselves or should they be ruled by France? Was the United States an independent state or was it, in effect, a province of France?

The Federalist theory of the conduct of France.

The conduct of the French ministers in this country, and the disregard which France had shown for the treaties of 1778 since the summer of 1793, with the exception of the period during which the complaisance of Monroe had led the French republic to suppose that it could obtain more substantial benefits by pretending to observe them, were due to the belief that it could compel the United States to do the will of France. This was why, after the American government had been guilty of the audacity of making a treaty with England, France had driven one American minister out of Paris,

and had kept the three envoys waiting vainly for six months in the ante-rooms of the French ministry.

The Republicans, on the other hand, believed that upon the American government rested the responsibility for the relations between France and the United States. The real attitude of France towards this country, in the opinion of the Republicans, was shown in 1793, when, out of a generous regard for our interests, the French republic declined to call upon the United States to make good the guarantee clause of the treaty of 1778. It was also shown in 1794–5, when Monroe was minister to France. Driven to take unfriendly measures towards this country by our unjust interpretations of the treaties of 1778, France repealed those measures, and showed a chivalric readiness to fight our battles for us as soon as Monroe had succeeded in convincing the French government that the United States heartily wished the success of the French Revolution.

The Republican theory.

It was indeed true, the Republicans were obliged to admit, that the provision decree of May–July, 1793, bore an unfriendly look. But in the situation of the French republic, at that time engaged in a life-and-death struggle with nearly the whole of Europe, what generous mind could fail to see that decree in its true light, as an extreme measure rendered justifiable and necessary by the desperate condition of France? To expect a country which, in sublime disregard of the laws and

usages of all civilized countries, had sacrificed thousands of its citizens on the altar of liberty, to hamper itself with treaties and the cobwebbed principles of international law while struggling for existence with nearly all the powers of Europe, would have been utterly absurd. As to the treatment of this country by France after the British treaty was ratified,—we had brought it upon ourselves, since in making that treaty we had entered into substantial alliance with the inveterate enemy of France.

Federalist theory of the Republicans.

From the point of view of the Federalists, the Republicans were entirely consistent in their defence of France. The party that had opposed every measure which looked towards conferring upon the Congress of the Confederation absolutely indispensable powers; that had been in favor of paper money, and every other measure which tended to destroy the obligations of contract; that had first opposed the Federal Convention, and then the adoption of the constitution; that had arrayed itself against every measure which had been proposed for making honest provision for the debts of the country; that had opposed the enforcement by the government of the laws of the land in suppression of an insurrection, and attempted to defeat a treaty which had been made by the legally constituted authorities,—why should not this party sympathize with the great propagandist of Anarchy? To prefer the American government to that of France would have been to prefer law and order to chaos. But, in the

opinion of the Federalists, such a preference on the part of their antagonists would have been inconsistent with the whole history of the Republicans. Any restraint on freedom of action, however just and necessary, the Republicans regarded as a restraint on liberty. But as government without such restraint cannot exist, the Republicans, as the Federalists believed, were opposed to all government.

Republican theory of the Federalists.

From the point of view of the Republicans, the Federalists were just as consistent in their persistent attempts to embroil this country with France, and thus enter into practical alliance with England. Was not the leader of the Federalist party Alexander Hamilton, the man whose fertile brain originated all its measures, and whose towering intellect had enabled him to impose his policies even upon Washington? And had he not declared in the Federal Convention that the British constitution was the best in the world? Had he not avowed his preference for an aristocratic republic and a highly centralized government? Was it not the one aim of all his measures to break down the barriers which the constitution had put in the way of the attainment of these objects? Was it not the aim of his financial policy to increase unduly the debts of the nation, in order that he might have at hand a "corrupt squadron," ready to carry out his measures? Was not the interpretation of the constitution which he was constantly urging calculated to

enable the national government to absorb all the powers of the governments of the states? To expect a party that followed such a leader to sympathize with a country which was fighting for liberty against a country which embodied all his ideals was, in the opinion of the Republicans, utterly absurd.

Let us see how the diverse views of the two parties were reflected in the legislation of the time. On March 19, the President sent Congress a message in which he stated the conclusion which he had reached from a careful consideration of the despatches from our envoys. He told Congress that, although nothing had been left undone which honorably could have been done, he saw no reason to expect that the envoys could accomplish the object of their mission without abandoning the principles which lay at the basis of our existence as an independent nation. He therefore urged Congress to adopt measures for the protection of our commerce and citizens; "for the defence of any exposed portions of our territory; for replenishing our arsenals, establishing foundries and military manufactories, and to provide such efficient revenues as will be necessary to defray extraordinary expenses and supply the deficiencies which may be occasioned by depredations on our commerce." He also informed Congress that he had cancelled the instructions to collectors not to permit private armed vessels to sail.

The President's message to Congress.

In a letter to Madison, Jefferson declared that the President's message was insane, and that he could see no reason in favor of war "resulting from views either of interest or honor strong enough to impose even on the weakest mind." The only explanation he was able to give of "so extraordinary a degree of impetuosity" was by supposing it to be due either to the desire to establish a monarchy, or to effect the separation of the states. He thought that Congress should pass a law prohibiting the sailing of private armed vessels, as the President had withdrawn his prohibition, and then adjourn, since to do nothing and gain time was everything.*

Jefferson's opinion of the message.

Immediately after the receipt of the President's message, the House passed a bill making appropriations for the equipment of the three frigates which had been authorized at the late session. A few days later (March 27), the policy of the opposition was developed in three resolutions offered by Spriggs of Maryland. The first declared that it was not expedient for the United States to resort to war against the French republic; the second, that the arming of merchant-vessels ought to be restricted; the third, that adequate provision ought to be made for the protection of our seacoast and for the internal defence of the country. Opposition to every measure that contemplated *offensive* war; a readiness to support measures

Spriggs' resolutions.

* Writings of Thomas Jefferson (Ford's Edition), VII., 219, 221.

that looked towards *defensive* war—that was the policy of the Republicans.

In the course of the debate upon these resolutions, a motion passed (April 2) requesting the President to communicate to Congress the despatches which had been received from our envoys to France. The President immediately complied with the request. Having first been examined by Congress in secret session, the letters which told of the gross insults to the United States were published and thereby submitted to the consideration of the American people.

The President sends the despatches to Congress.

The effect of these despatches upon Congress and the country ought to have convinced the Hamiltonian Federalists that they had greatly overrated the strength of the disintegrating element of American society. The Republicans, who had a good majority in the House of Representatives when Congress met, were reduced to a powerless minority. Some of them changed sides; others went home. On April 26, Jefferson wrote Madison: "Giles, Clopton, Cabell, and Nicholas have gone, and Clay goes to-morrow. . . . Parker has completely gone over to the war party. In this state of things, they will carry what they please." * A motion offered by Edward Livingston to request the President to instruct Gerry to proceed with the negotiations in France was voted down by fif-

Effect upon Congress and the country.

* Writings of Thomas Jefferson (Ford's Edition), VII., 245.

ty-one to thirty. The judgment pronounced upon the conduct of the French government by the country at large was even more emphatic. "Millions for defence, but not one cent for tribute," became the popular cry. In New York, volunteer companies of horse and infantry were raised, and meetings of former officers of the army and navy, and of the citizens of both parties, were held to concert measures for the defence of the city.* In Philadelphia, twelve hundred young men marched in a body to the house of the President to present an address to him. From all parts of the Union addresses poured in upon the President, convincing even extreme Federalists that the people were ready to support "the most decisive measures of government."

The firm and manly tone of the President in his responses to these addresses excited enthusiastic admiration on the part of the masses of his party. "Since man was created and government was formed," wrote Troup to King, "no public officer has stood higher in the confidence and affection of his countrymen than the President now does." Said George Cabot: "All men whose opinions I know are unbounded in their applause of the manly, just, spirited, and instructive sentiments expressed by the President in his answer to the addresses."†

The President's attitude.

* Robert Troup to Rufus King, June 10, 1798. Life and Correspondence of Rufus King, II., 345.

† Life and Letters of George Cabot, 158.

On June 21, Adams sent to Congress the message in which he declared the negotiations were at an end, and made the assertion which afterwards became so famous: "I will never send another minister to France without assurances that he will be received, respected, and honored as the representative of a great, free, powerful, and independent nation." The Federalists held a caucus to decide whether they should declare war against France. Although a powerful minority was strongly in favor of it, the majority was against it. A reason of great influence with the majority was that John Marshall, who reached the United States June 16, expressed the opinion that France would declare war as soon as she heard of the publication of the despatches, and the Federalists understood that while the Republicans would oppose an offensive war, they would not attempt to prevent the country from defending itself against the attacks of France.*

A caucus of the Federalists decides against war.

The position of the Republicans was clearly indicated by the Republican leader in the House of Representatives, Albert Gallatin. In a speech made on April 19, he said: "The committee is told that if we do not resist, France will go on step by step in her course of aggression against this country. This is mere matter of speculation. It is possible France may go on in this way. If she goes on to make war upon us, then let our vessels be used in their full

Position of the Republicans.

*Life and Correspondence of Rufus King, II., 543.

power. Let us not, however, act on speculative grounds, but examine our present situation, and, if better than war, let us keep it." He believed it wise to say in effect: "We have met with captures and losses from the present European war; but, as it is coming to a close, it is not our interest to enter into it, but rather to go on as we have done."*

Temper of the Federalists.

But though the Federalists decided not to declare war against France, they determined upon measures that could only have been justified, if at all, by a state of war. Despite the enthusiastic way in which nearly the whole country rallied to the support of the government when it seemed likely that France was going to declare war upon the United States, despite the fact that such Federalists even as George Cabot, who was even less hopeful than Hamilton of the stability of a purely popular government, were convinced that the majority in favor of the enforcement of law and the preservation of order was very great, the Federalists stained the statute-books of the nation with the outrageous law that put the right of aliens to reside in this country at the mercy of the President of the United States. They believed that the French had emissaries in the country who were trying to create divisions among American citizens, and that unless the

* Annals of Congress, 1797–1799, II., 1472. The Republicans held a caucus to consider what course they should take. They were divided in opinion. The minority was left free to follow its judgment.

President was given the right to order these aliens out of the country there was great danger of their succeeding. To no purpose were the Federalists told by Gallatin that since the Whisky Insurrection nothing had been seen but a cheerful submission to the laws: that an attachment to the constitution and a sense of the happiness enjoyed under it were universal. The heated minds of the excited Federalists were haunted by images of conspiracies to subvert the government, and in order to save it they thought it necessary that at least the alien plotters and conspirators should be brought within the reach of the law. The Alien Law empowered the President, at his discretion, to order out of the country any alien whom "he shall judge dangerous" or "shall have reasonable ground to suspect" of being dangerous to the public peace. If the alien refused to obey, he should, "on conviction thereof, be imprisoned for a term not exceeding three years." In reply to an able argument against the constitutionality of the bill, the Federalist Harper intimated that opposition to the measure was part of a plot to betray the country to a French invading army.*

The Alien Law.

In the form in which the Alien Bill passed the Senate it was still more tyrannical. The Senate bill provided that any alien who returned after having been banished from this country should be liable to impris-

* Annals of Congress 1798-1799, 1992.

onment and hard labor for life. The operation of the law was limited to two years.

In order to save the country the Federalists thought it necessary not only to provide for its defence against the French emissaries within it, but to put into the hands of the government a weapon with which it might defend itself against its own seditious citizens. Accordingly they passed the famous, or rather the infamous, Sedition Law. The bill originated in the Senate. As originally introduced, the first section declared that the people of France were enemies of the United States, and that adherence to them, giving them aid and comfort, was punishable with death. The fourth provided that any person who by writing printing, publishing, or speaking should attempt to justify the hostile conduct of the French, or to defame and weaken the government of the United States by any declarations or expressions which tended to induce a belief that the government or any of its officers was influenced by motives hostile to the constitution or to the liberties or happiness of the people, might be punished by a fine or imprisonment.

The Sedition Law.

The fanaticism of the Federalist Senate, intense as it was, had not reached such a point of madness as to permit it to pass the bill in that form. Accordingly the first section was stricken out. But it is a fact of great interest to note that there were twelve men in the Senate who voted for the bill with the fourth section as above

described, while only six voted against it, and that it was defeated in the House only by the casting vote of the Speaker. Had the bill become a law in its first form, it would have enabled the Federalists not only to silence entirely the Republican press, but, through the vagueness of its language, to treat as crimes every form of opposition to their measures. If to say or to write that the Federalists were influenced by motives hostile to the constitution, that their aim was by interpretation and precedent to make it provide for a stronger government than the men who framed it intended, was a crime, then it was a crime to say what almost every Republican believed with passionate intensity. When Livingston declared that the principle of the Alien Bill "would have disgraced the age of Gothic barbarity," the Federalist Otis declared that this very remark was "evidence of seditious disposition." And if this speech had been delivered anywhere but on the floor of Congress, it would have been a crime in accordance with the bill as it passed the Senate. Harper, indeed, declared that speeches made in the House were the real objects which the bill aimed to suppress.

As finally enacted the law certainly went far enough towards establishing a tyranny. The first section made it a high misdemeanor, punishable by fine, not exceeding five thousand dollars, and imprisonment from six months to five years, "for any persons unlawfully to combine and conspire together with intent to oppose

any measures of the government of the United States directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding office under the government of the United States from executing his trust," or with similar purpose "to commit, advise, or attempt to procure any insurrection, riot, unlawful assembly, or combination."

The second section imposed a fine of not more than two thousand dollars, and imprisonment for not more than two years, as a penalty for the printing or publishing any false, scandalous, or malicious writings against the government of the United States, or either House of Congress, or the President, with intent to defame them, or to bring them into contempt or disrepute, or to excite against them the hatred of the good people of the United States, or to stir up sedition, or with intent to excite any unlawful combination for opposing or resisting any law of the United States or any lawful act of the President, or in general to incite to opposition or resistance of any such law or act, or to aid, abet, or encourage any hostile designs of any foreign nation against the United States. To these two sections two more were added, on motion of the Federalist James Asheton Bayard of Delaware. These provided that the truth of the matter stated might be given in evidence as a good defence.

It has been said that there was great provocation for the passage of the act—that the falsehood, calumny, and

shameful abuse in which editors indulged with a freedom which it is almost impossible to conceive by any one who has not waded through the party filth of the time, go far towards justifying it. But to this the conclusive reply is that the coarseness and virulence and indecency of party warfare were by no means monopolized by the Republican press. No intelligent student of history supposes that the intention of the Sedition Law was to impose any restraint upon the Federalist editors. No; it was not coarseness and abuse and indecent attacks, as such, that the Federalists objected to, but to coarseness and abuse when directed at themselves. And it was one chief purpose of the Sedition Law to prevent attacks upon the author of it.

Purpose of the Sedition Law.

The object of the law is clearly shown by the character of the prosecutions that were based upon it. Among the offences for which Lyon, Republican member of the House of Representatives from Vermont, was punished, was his assertion that "every consideration of the public welfare was swallowed up in a continual grasp for power [by the President], and unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice." Thomas Cooper was fined four hundred dollars and imprisoned six months for saying that in 1797 the President was "hardly in the infancy of political mistakes"; that Adams had not then declared that a republican government might mean anything; had not signed the Alien and Sedition laws; had not saddled a standing army

and a permanent navy upon the country; had not brought its credit so low as to borrow money at eight per cent, etc. Frothingham was fined and imprisoned for accusing Hamilton of attempting to buy the "Aurora" in order to suppress it in the interests of the Federalists.

In truth the Alien and Sedition laws were eminently characteristic of the Federalists. These laws received the support of every leading man in the party, Washington included, except John Marshall; and because he did not approve them the New England Federalists were disposed to question the soundness of his Federalism. Said Goodhue: "I confess nothing has given me more surprise and regret than that General Marshall should so far degrade himself as to fan the flame of opposition to government by giving his opinion so decidedly against the Alien and Sedition laws."*

Alien and Sedition laws characteristic of the Federalists.

Though George Cabot was not willing to read Marshall out of the party, he was of the opinion that Marshall had "much to learn on the subject of a practicable system of free government for the United States."†

Cabot meant that the only practicable system of government for this country was one which based its measures on the assumption that democracy must be kept down by a strong hand.‡

* Life and Letters of George Cabot, 179.

† Ibid., 176. ‡ Ibid., 181.

These laws were characteristic of the Federalists not only in what they aimed to accomplish directly by means of them, but in what they hoped to effect indirectly. In 1798, a question in dispute between Federalists and Republicans was as to the crimes over which the federal courts had constitutional jurisdiction. The Republicans contended that the federal courts had jurisdiction over those crimes only which were expressly enumerated in the constitution—treason, counterfeiting United States coin or securities, piracies, and offences against the laws of nations. The Federalists, on the contrary, claimed that offences which are crimes not because they are violations of any law which has been enacted—statute law—but are crimes because they are violations of laws based on custom—common law—also come under the jurisdiction of the federal courts. In 1798, libel was still a common-law offence. From the point of view of the Republicans, therefore, the Sedition Law was a dangerous precedent, since it brought within the jurisdiction of the federal court offences which, in their opinion, the constitution had left exclusively under the jurisdiction of the courts of the states.

Division of opinion as to jurisdiction of United States courts.

During this session of Congress laws were enacted establishing a Navy Department (this bill was passed April 30; Benjamin Stoddart was made Secretary of the Navy after the position had been declined by George Cabot); authoriz-

Laws passed during this session of Congress.

ing a provisional army of ten thousand men (May 28); * suspending all commercial intercourse between France and the United States after the 1st of July (the President was authorized to restore intercourse between the two countries upon cessation of hostilities by France); prolonging from five to fourteen years the time of residence necessary in order that aliens might become citizens, and requiring all white aliens to report and register themselves (June 18); authorizing merchant-vessels to arm and forcibly repel the attacks of the French (June 25); empowering the President to restrain or remove in time of war or invasion all subjects or citizens of the hostile power (July 6); making an appropriation for distributing arms among the states (July 7); declaring the treaty between France and the United States no longer binding (July 7); authorizing the President to issue letters of marque and reprisal against France (July 9); laying a direct tax of $2,000,000 (July 14); authorizing the President to borrow $2,000,000 in anticipation of the direct tax, and $5,000,000 besides (July 16).

On July 16, Congress adjourned. "I never reflect upon the recent conduct of France towards us," wrote Robert Troup to Rufus King, October, 1798,† "without an ejaculation to Heaven for its special favor in giving us cause to dissolve our connection with her. It was a

* Hamilton thought that the army should be increased to twenty thousand, and, besides militia, a provisional army of thirty thousand authorized.

† Life and Correspondence of Rufus King, II., 433.

connection pregnant with the most destructive poison to our morals. . . . I consider the act of Congress which rescinded the treaties as a new Declaration of Independence; and if my wishes were to be gratified, the day in which the act finally passed would be celebrated as a great anniversary festival. . . . I may be an enthusiast; but, my good friend, I have such a horror of the French Revolution and the misery it has inflicted upon so great a portion of our species, that I think the revolution we have just achieved is one of the choicest blessings which God in his providence ever bestowed upon a people."

CHAPTER XX.

THE KENTUCKY AND VIRGINIA RESOLUTIONS.

JEFFERSON declared that he considered the Alien and Sedition laws as merely "an experiment on the American mind to see how far it will bear an avowed violation of the constitution. If this goes down, we shall immediately see attempted another act of Congress declaring that the President shall continue in office during life, reserving to another occasion the transfer of the succession to his heirs and the establishing of the Senate for life." * In a conversation between him and John Breckenridge of Kentucky and W. C. Nicholas, "the engaging the co-operation of Kentucky" with Virginia "in an energetic protestation against the constitutionality" of the Alien and Sedition laws became a subject of consultation. Jefferson offered to draw up resolutions for that purpose, Breckenridge undertaking to introduce them in the legislature of Kentucky. It was stipulated by Jefferson, and he was solemnly assured, that the quarter whence they came should not be divulged. †

Jefferson on the Alien and Sedition laws.

Jefferson agrees to write the Kentucky resolutions.

In due course the resolutions were written and introduced as agreed. After receiving some modifications,

* Writings of Thomas Jefferson (Ford's Edition), VIII., 283.
† Ibid., VII., 290.

they were passed in November, 1798. Later in the year, Madison wrote a series of resolutions of the same character which were passed by the legislature of Virginia.*

The following is the important paragraph of the Virginia resolutions: "This Assembly doth explicitly and peremptorily declare that it views the powers of the federal government as resulting from the compact to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are the parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them." Virginia resolutions.

The significance of the entire paragraph depends upon the meaning given to the word "interpose." Did Madison mean that each individual state had a right to interpose in the sense that, as a sovereign power, it could declare null and void within its boundaries every law that it regarded as a deliberate, palpable, and dangerous exercise of powers not granted to the general government by the constitution? He himself has emphatically told us that this was not Meaning of "interpose."

* Letters and Writings of Madison, II., 506.

his meaning. In 1831, when the question of nullification was being hotly discussed, Calhoun tried to show that it was taught by the Virginia and Kentucky resolutions. Madison protested. He said that Virginia had never maintained that a single state had the constitutional right to forcibly prevent the execution of a law of the United States. The state interposition for which Virginia had contended was that provided for by the constitution. The constitution provided for the calling of a convention either by Congress or by two thirds of the states. The decision of such a convention when ratified by the legislatures of three fourths of the states would have been final as to the constitutionality of the Alien and Sedition laws. That was what the Virginia resolutions meant by "interpose."*

There is nothing in the resolutions which is inconsistent with Madison's interpretation of them. The right "to interpose" is claimed for the "states."† The singular term is never used. The resolutions did indeed affirm that the constitution is a compact between separate and sovereign states. If this doctrine were true, the constitution would be a sort of treaty, and a state

* Letters and Writings of James Madison, IV., 204, 242.

† But Madison's interpretation is difficult to reconcile with a letter which he wrote to Jefferson in 1798. "Have you ever considered thoroughly," he says, "the distinction between the power of the *state* and that of the *legislature* on questions relating to the federal pact? On the supposition that the former is clearly the ultimate judge of infractions, it does not follow that the latter is the legitimate organ, especially as a convention was the

would be justified in renouncing its obligations when the constitution was violated by any other state.

But though the right of secession could be based on such a view of the constitution, the right of nullification could not. To say that a state had a right, under certain circumstances, to set aside a treaty, was one thing; it was quite another thing to say that it had a right, while professing to be bound by it, to oppose the authority which it created.

The propositions asserted by Jefferson's resolutions.

Jefferson's resolutions assert three propositions: first, since the constitution is a compact between each individual state and all the other states, each state has a right to judge for itself when the constitution has been violated and what sort of redress the nature of the violation calls for; secondly, the Alien and Sedition laws were a violation of the constitution in several specified particulars; thirdly, when the national government passes a law and the power to do it has not been delegated to it by the constitution, a nullification of the law by the sovereign states, acting individually, is the rightful remedy.*

organ by which the compact was made. This was a reason of great weight for using general expressions that would leave to other states a choice of all the modes possible for concurring in the substance, and would shield the General Assembly [of Virginia] against the charge of usurpations in the very act of protesting against the usurpations of Congress."—Letters and Writings of Madison, II., 149, 150.

* Writings of Thomas Jefferson (Ford's Edition), VII, 289, 309.

The first proposition was asserted by the first resolution. It declared that the constitution was a compact; "that to this compact each state acceded as a state, and is an integral party, its co-states forming, as to itself, the other party; that the government created by this compact was not made the exclusive or final judge of the powers delegated to itself, since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

The first of the Kentucky resolutions asserts the first proposition.

Here the meaning is too plain to allow any jugglery of interpretation to obscure it. And the process by which some of the most important conclusions of the resolution were reached is equally clear. Jefferson, the champion of strict constitution, based his belief that each state had an equal right with the national government to judge when the constitution had been violated, and what redress it should demand under such circumstances, *not upon a study of the constitution, but upon a consideration of the consequences of supposing that the decision of the general government, as to the extent of its powers, was final*—"that would have made its discretion, and not the constitution, the measure of its powers." The second, third, fourth, fifth, and sixth resolutions asserted that the Alien and Sedition laws did

violate certain specified provisions of the constitution.*

The third proposition was asserted by the eighth resolution. "This Commonwealth" (it will be remembered that these resolutions were written on the supposition that they would be passed, as they were, by the legislature of Kentucky) "is determined, as it doubts not its co-states are, to submit to undelegated and, consequently, unlimited powers in no man or body of men on earth; that in cases of abuse of the delegated powers, the members of the general government being chosen by the people,

The third proposition asserted by the eighth resolution.

*The sixth resolution was a powerful arraignment of the Alien Law. It declared that the imprisonment of a person on his failure to obey the simple order of the President to leave the country was contrary to that amendment of the constitution that provides that "no person shall be deprived of liberty without due process of law"; that the same act which undertook to "authorize the President to remove a person out of the United States who is under the protection of the law, on his mere suspicion, without accusation, without jury, without public trial, without confrontation of witnesses against him, without having witnesses in his favor, without defence, without counsel," was contrary to the amendment of the constitution which provides that in all criminal prosecutions the accused shall enjoy the right to be tried by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory processes for obtaining witnesses in his favor, and to have the assistance of counsel for his defence; that the same act in transferring the power of judging from the courts to the President violates that article of the constitution that provides that the judicial power of the United States shall be vested in courts, and that this transfer of judicial power was to "that magistrate of the general government who already possesses all the executive and a negative in all legislative powers."

a change by the people would be the constitutional remedy; but where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy; that every state has a natural right in cases not within the compact to nullify *of their own authority* all assumptions of power by others within their limits."

Jefferson's meaning.

From this analysis Jefferson's meaning is perfectly clear: the constitution being a compact between each individual state and all the other states, each state has a right to judge when the constitution has been violated, and what sort of redress the nature of its violation calls for; the constitution has been violated in various particulars, and for such violations *nullification by individual states is the rightful remedy.* It is indeed true that the state-sovereignty doctrine of Jefferson was formulated as a shield of protection for the individual, while in the hands of Calhoun it was to be a "shield of protection for a section and for slavery."* But if a state is sovereign for one purpose, it is a contradiction to say that it is not sovereign for any purpose whatever. Both state and federal governments are alike agents of the one American people. If this is not true, if a state is sovereign, if it can, in the exercise of its sovereignty, set aside one law, it can set aside any. If it can set aside unconstitutional

*Cyclopædia of Political Science, Political Economy, and United States History; article on Kentucky and Virginia Resolutions, by Alexander Johnston.

laws like the Alien and Sedition laws, in the interests of the individual, it can for the sake of slavery (or could), set aside constitutional laws. It cannot be sovereign when the setting aside of unconstitutional laws is in question, without being sovereign when the setting aside of constitutional laws is in question. It cannot have sovereign power to do right without having sovereign power to do wrong.

It is idle to contend, in defence of Jefferson as the author of the Kentucky resolutions, that they do not mean what they say. The truth is that when Jefferson wrote them he believed that liberty was being driven to its last stronghold. He believed that the Federalists were bent on carrying out a programme which, unless arrested at the beginning, would drive the states into revolution and the shedding of blood, thus furnishing the enemies of humanity with a new pretext for calumnies against republican government. Failing to realize that the only barrier that can be erected against such schemes must be found in devotion to liberty, he himself forged, in the very resolutions that were written to defend it, the most effective weapon that has been used against republican government in the last hundred years.

Defence of Jefferson.

But it is unjust to Jefferson to say that the doctrine of these resolutions was his sober thought as to the proper remedy for violations of the constitution. He stated his abiding belief on the matter a few years before

his death. "The ultimate arbiter," he said, "is the people of the Union, assembled by their deputies in convention, at the call of Congress, or of two thirds of the states. Let them decide to which they mean to give an authority claimed by two of their organs."*

Copies of the Kentucky and Virginia resolutions were sent to the executives of the other states to be submitted to their legislatures. Of the seven states that replied, all objected to the resolutions, †—Delaware on the ground that they were an unjustifiable interference with the powers of the general government; Massachusetts and Vermont, because they were usurpations by the legislatures of Kentucky and Virginia of the powers of the federal courts. Pennsylvania and the Southern states made no responses.

Replies of the states to the Virginia and Kentucky resolutions.

The replies of the states cannot be regarded as a fair indication of popular sentiment. The Northern states objected to the resolutions, not because they taught the doctrine of state sovereignty, but because they arraigned the Alien and Sedition laws. A few of the Federalist leaders —men like Washington, Hamilton, Adams, Jay, and Marshall—doubtless regarded the general government as the representative of the one sovereign American people. But what such Federalists as George Cabot, Timothy

Popular sentiment and the resolutions.

* Jefferson's Works (Washington's Edition), VII., 298. Letter to Justice Johnson, June 12, 1823.

† Elliott, IV., 532.

Pickering, Harrison Gray Otis, and Gouverneur Morris thought of it the history of the next few years was to show with unmistakable clearness. To them, as to the mass of the people of both parties, the Federal government was the agent of the states. That this new government, this upstart of yesterday, had the power to impose its edicts on unwilling states was a political solecism to which they could in no wise assent. The Revolutionary War had been fought, not to secure the independence of the nation, but of the states. The league into which they had entered was a league of independent states. The Congress of the Confederation was a government which had been created to promote the interests of independent states. In adopting the constitution to take the place of the Articles of Confederation they had in no wise given up their independence; they had only created a government which could effectively carry out the purposes of the original Confederation. That, doubtless, was the thought of the vast majority of the people of both parties. James Iredell, one of the judges of the Supreme Court, who had been a member of the Federal Convention and who had taken a conspicuous part in defending the constitution in the North Carolina convention, in dissenting in 1794 from the decision that a state could be sued, said: "Every state in the Union, in every instance where its sovereignty has not been delegated to the United States, is considered to be as completely sovereign as the United

Justice Iredell's opinion.

States are in respect to the powers surrendered. The United States are sovereign as to all the powers of government actually surrendered; each state in the Union is sovereign as to all the powers reserved."* From that opinion the doctrine of the Virginia resolutions was an inevitable inference. If both parties were sovereign, who was to decide between them?†

*2 Dallas, 419.

† Thorpe's Constitutional History of the American People, Chapter VI.

CHAPTER XXI.

DOWNFALL OF THE FEDERALIST PARTY.

THE energetic measures passed by Congress in June and July, 1798, seem to have taken Talleyrand and the French government completely by surprise. That a nation of no more consequence than Genoa (this was the opinion which Talleyrand expressed of the United States) would dare to throw down the gauntlet at the feet of the conquerors of continental Europe was a possibility upon which they had not reckoned. The Directory at once changed its attitude. It assured Gerry that it was eager to preserve peace between the two republics; it no longer demanded satisfaction for the language of Adams' message; it declared that it did not wish the United States to break Jay's treaty; it issued circulars forbidding the further capture of American vessels; it released American seamen, and in August declared, in a semi-official way, its readiness to receive a new American minister provided his political opinions were acceptable.

Effect upon France of the energetic measures of the United States.

When Congress met in December, 1798, the Union was in great danger. Gallatin wrote to his wife that the Federalists "avow a design of keeping up a standing army for domestic purposes," and that Hamilton, at the table of Governor Mifflin, "declared that a stand-

ing army was necessary."* Gallatin was doubtless correctly informed.

The published correspondence of some of the leading Hamiltonian Federalists—George Cabot, Theodore Sedgwick, Oliver Wolcott, Fisher Ames, and Hamilton himself—leaves no doubt that they believed that the long expected crisis "was imminent, the crisis when the question between the friends of order and government and the sedition-mongers" and "traitors" would be settled by an appeal to arms.†

With the Federalists in such a temper, one does not hazard much in saying that war with France would have led to such treatment of the Republican party as would have resulted in civil war.

Fortunately for the country, the President was not blinded either by anti-French fanaticism or by the delusion that the Republican party was composed of anarchists who only waited an opportunity to destroy the government. The day after his inauguration, believing that "the rumbling of party calumny ought not to discourage him from consulting men whom he knew to be attached to the interests of the nation," he called upon Jefferson to consult about the mission to France, even inquiring whether Jefferson himself could not be induced to accept an appointment

Position of the President.

* Adams' Life of Gallatin, 223.

† Hamilton wrote: "With a view to the possibilities of internal disorders alone, the force is not too considerable."—Works' VIII., 514.

as minister to that country. Though, to use his own language, he differed from Jefferson "by the whole horizon" concerning the practicability and success of the French Revolution and some other points, "he did not think that Jefferson differed materially from him" with regard to the national constitution.*

Nor did the President share in the enthusiasm of his party with reference to England. The statement which he made when he was presented to George III. in 1785, "I must avow to your Majesty that I have no attachment save to my own country," was just as true in 1798. He wrote to his wife: "I would not have my son go as far as Mr. Jay, and affirm the friendly disposition of that country [England] to this. I know better. I know their jealousy, envy, hatred, and revenge covered under pretended contempt."

There was another article in the creed of a great number of the Federalists, which Adams did not accept: that Alexander Hamilton was a very great man who ought always to be consulted and whose opinions were entitled to special consideration. Hamilton had used his influence in the first presidential election to diminish the number of votes for Adams. In the election which resulted in the elevation of Adams to the presidency, Adams was led to believe that Hamilton had tried to bring about the election of Thomas Pinckney. The constitution then provided that

Hamilton and Adams.

* Boston Patriot, Letter XIII. The letter was written in 1809. Life and Works of John Adams, IX., 284, 285.

for President two men should be voted for by each presidential elector, and that the one receiving the highest number of votes should be President, and the one next highest Vice-President. Hamilton had urged all of the New England electors to vote for Pinckney, a South Carolinian, as well as for Adams. He knew that some of the electors in the Southern states would be likely to vote for Pinckney who would not vote for Adams, and that if the New England men all voted for Pinckney, he would be elected President.

Adams would have been a man of remarkable modesty if such conduct had not made him indignant. But he was far from being a modest man. "To see such a character as Jefferson," he had written March 30, 1797, to Henry Knox, "and much more such an unknown being as Pinckney, brought over my head, and trampling on the bellies of hundreds of other men infinitely his superiors in talents, services, and reputation, filled me with apprehensions for the safety of us all. It demonstrated to me that if the project succeeded, our constitution could not have lasted four years. We should have been set afloat and landed, the Lord knows where. That must be a sordid people indeed, a people destitute of a sense of honor, equity, and character, that could submit to be governed, and see hundreds of its most meritorious public men governed, by a Pinckney under an elective government."*

Adams' vanity.

* Life and Works of John Adams, VIII., 535.

It will be remembered that Adams continued the cabinet of Washington, and that most of its members were the devoted political and personal friends of Hamilton. Differing with the President as they did in their estimates of their political antagonists and of the attitude of England towards this country, above all in their estimates of Hamilton, with whom the leading members of his cabinet were in confidential correspondence, a collision was inevitable. The first clash occurred after the adjournment of Congress in July, 1798. As President of the United States it was Adams' duty to appoint the officers of the provisional army which Congress had provided for in the closing days of its session. In deciding who should be put at the head of it, there was little occasion for the exercise of discretion: the whole country instinctively turned towards Washington. Apparently deferring to this universal wish rather than to any strong desire of his own, Adams appointed Washington (July 7, 1798) to the position of Lieutenant-General and Commander-in-chief of the Army, and the Senate unanimously confirmed him.

Adams and his cabinet.

Washington, it need scarcely be said, was perfectly well aware of the relations between Adams and Hamilton. He knew, moreover, that it was Hamilton's wish to be second to him in command, and that it was the judgment of a large number of influential Federalists that Hamilton's abilities entitled him to the position.

Conditions under which Washington accepts the appointment of Commander-in-chief of the Army.

In this estimate Washington himself concurred. He accordingly accepted the appointment as Commander-in-chief upon two conditions: first, that the chief line and staff officers should be such as he confided in; and secondly, that he should not be called into the field until the situation of the country made it indispensable.

Adams at once submitted Washington's letter of acceptance to Congress, together with the nomination of Hamilton, C. C. Pinckney, and Knox as Major-Generals, in the order named—the names occurring in this order in a list furnished by Washington.

As soon as the extra session was over, the President hastened to his home in Quincy. Hardly had he arrived there when he found that the question as to who was to be second in command was still in dispute. The friends of Hamilton were claiming the position for him on the ground that his name stood first on the list of Major-Generals. But many of the New England papers urged that the position belonged to Knox because of the higher rank he had held in the Revolutionary War. Adams, as a New-Englander, who liked Knox, a New England man, and strongly disliked Hamilton, preferred to give the position to Knox. But the friends of Hamilton in and out of the cabinet were determined to prevent this if possible. Accordingly McHenry, Secretary of War, sent to Adams sundry letters which Hamilton himself had drafted, the object of which was to reconcile Knox to a

Dispute over the precedence of the Major-Generals.

subordinate position and induce Adams to announce that the order was to be Hamilton, Pinckney, and Knox. These letters made Adams angry. "There has been too much intrigue in this business," he said, "with General Washington and me." He ordered that the commissions of the three Major-Generals should be made out in such a way as to put Knox first, Pinckney second, and Hamilton third. But this called out a letter from Washington (September 25) in which he stated that he should regard such an arrangement as a violation of the condition upon which he had accepted his appointment, and threatened to resign. To this letter Adams yielded with as much grace as he could, and appointed Hamilton (October 9) second in command.*

Effect of Hamilton's appointment upon Adams.

The effect of this successful attempt to compel Adams to appoint second in command a man whom he disliked intensely was not only to plant in his mind seeds of distrust towards his cabinet, but also to disincline him to a policy which might enhance the reputation of Hamilton, and to weaken his belief in the probability of war. "One thing I know," he wrote to McHenry (October 22), "that regiments are costly everywhere, and more so in this country than in any other under the sun. If this nation sees a great army to maintain without an enemy to fight,

* See Schouler's History of the United States, I, 417, 422, for a full account of the details of the methods employed by the friends of Hamilton in the cabinet to force the latter upon Adams as first Major-General. Cf. Life and Writings of John Adams, VIII., 588, 591.

there may arise an enthusiasm that seems little to be foreseen. At present there is no more prospect of seeing a French army here than in heaven." *

About the same time (October 30), having just received despatches from William Vans Murray, our minister to the Netherlands, that Talleyrand had been making decided advances to Murray towards reopening diplomatic relations, Adams wrote Pickering to get the opinion of the various heads of departments as to whether further proposals for negotiation ought in any event to be entertained.†

Besides the personal considerations which inclined Adams to answer that question in the affirmative, there were other reasons, of great weight with him. He realized the dangers to which war would subject the young government. Like Washington in 1794, he believed that peace with honor was to be preferred to all other conditions. Accordingly, although in his message to Congress in December he had declared that the pretension on the part of the French republic to prescribe the qualifications which a minister of the United States ought to possess was inadmissible, and that to send another minister "without more determinate assurances that he would be received was an act of humiliation to which the United States ought not to submit,"—despite the strenuous

Vans Murray nominated to France.

* Life and Writings of John Adams, VII., 613.
† Ibid., 609.

opposition of his cabinet,—he gave it as "his deliberate and solemn opinion that, whether we negotiate with her or not, vigorous preparations for war will be alike indispensable," thereby clearly intimating that further negotiation with France was not out of the question.

Long before this Talleyrand had given the most "determinate assurances" that an American minister would be received. In his message in June Adams had said that he "would never send another minister to France without assurance that he would be received as the representative of a great, powerful, and independent republic." On September 28, 1798, Talleyrand caused the resident American minister at The Hague, William Vans Murray, to be assured that "whatever plenipotentiary the government of the United States might send to France in order to terminate the existing difficulties between the two countries, he would undoubtedly be received with the respect due to the representative of a free, independent, and powerful nation."* Adams took him at his word. Without even a hint to his cabinet of his intention, to say nothing of asking its advice, he nominated Murray (February 18, 1799) as minister to France.

Indignation of the Federalists.

The indignation of the Hamiltonian Federalists was boundless. The followers of Hamilton in the cabinet, Pickering, Wolcott, and McHenry, had been in favor of a declaration of war when in March, 1798, the despatches from our ministers were

* State Papers, II., 242.

received. They had tried to get the President to commit himself to a war policy in his speech to the two Houses of Congress in December, 1798, and, failing in that, a caucus of the Federalists in Congress had been called "to see if they could not get a vote for a declaration of war."* But although the war advocates were in the minority, they nevertheless hoped that the conduct of France would eventually make war inevitable. When they saw the President throw the whole weight of his official influence on the side of peace, they felt outraged beyond measure. In February, 1798, Pickering wrote to Hamilton: "We have all been shocked and grieved at the nomination of a minister to negotiate with France. I beg you to believe that it is wholly his [the President's] own act, without any participation or communication with any of us."

Theodore Sedgwick also wrote to Hamilton: "Had the foulest heart and the ablest head in the world been permitted to select the most embarrassing and ruinous measure, perhaps it would have been precisely the one which has been adopted. In the dilemma to which we are reduced, whether we approve or reject the nomination, evils only, certain, great, but in extent incalculable, present themselves." Why this intense indignation? It was because the Hamiltonian Federalists believed that in renewing negotiations with France the American government was entering into negotiations

* Life and Writings of John Adams, IX., 305.

with anarchists and thereby strengthening the anarchists in the United States. As the Republicans in 1794 had opposed the mission to England because, from their standpoint, to be at peace with England was to be at peace with the friend of tyranny and to increase the power of the enemies of liberty within the United States, so the Hamiltonian Federalists in 1799 opposed the French mission, since to be at peace with France was to be at peace with the friend of anarchy and to increase the power of the enemies of all government in the United States.

This grossly erroneous estimate of the dangers to the United States from American anarchists explains the effect upon the Federalists of an insignificant insurrection which broke out in Pennsylvania in 1799. Opposition to the direct tax provided for by Congress in 1798 culminated in a riot in certain counties in Pennsylvania. Thirty rioters having been arrested, they were rescued by a man named Fries at the head of fifty armed horsemen. The Hamiltonian Federalists believed that Fries' insurrection was only an indication of the natural tendencies of democracy, and that the unruly giant could only be kept from overthrowing the state by the strong hand of authority. When, therefore, Fries, who had been condemned to death, was pardoned by Adams, many leading Federalists thought that the President had been guilty of a culpable and gross breach of trust.

Fries' insurrection.

Cabot's letters to Hamilton.

But no clearer light can be found in which to view the effect of Adams' French mission upon the Hamiltonian Federalists, and thereby to study their political character, than two letters written by George Cabot to Hamilton. George Cabot stood high in the councils of the Hamiltonian Federalists. The intimate friend of Fisher Ames, Timothy Pickering, Oliver Wolcott, Theodore Sedgwick, and Hamilton himself, his opinions may justly claim special significance. "For myself," he said in a letter written in August, 1800, "I often declare that the mission to France, though impolitic, unjustifiable, dangerous, and inconsistent; the expulsion of able, upright, and faithful officers, . . . though a ruinous precedent; the pardon of Fries, though a sacrifice of the safety as well as dignity of the state; . . . that all these would not induce me to oppose the President's re-election if I did not view them as evidence, explained and confirmed by other evidence, that he has abandoned the system he was chosen to maintain, and that he is likely to introduce its opposite, with all its pernicious consequences, as fast as he can, and as far as his influence will go."

What was the system which Adams was chosen to maintain and which Cabot found evidence that he had abandoned? That appears from another letter written by Cabot to Hamilton. In this letter Cabot was speaking of the pamphlet which Hamilton had just written about Adams, of which mention will be made later

"They [certain Federalists] expected you would have analyzed him so effectually as to prove that he is and must be but little attached *to the support of the public credit and the rights of property;* in a word, that *war with England*, *privateering*, and *paper money*, with all their baneful appendages and consequences, are viewed by him, not as evils to be deprecated, but resources to be preferred to that stable condition aimed at by the Washington system which he hates, and which he has been constrained by circumstances to support."*

Here we have what may be termed a full-length portrait of the Hamiltonian Federalists in 1798,.1799, and 1800, in outline at least. Adams thought it better to waive the point of honor and send another mission to France; he thought that he might safely follow the example of Washington in dealing with the leaders of the Whisky Insurrection, and pardon Fries; he decided to demand the resignation of members of his cabinet who had endeavored persistently to thwart his policy rather than assist in carrying it out, and *therefore* he had abandoned the Washington system; *therefore* he was no longer attached to the support of the public credit and the rights of property; *therefore* he regarded war with England, privateering, and paper money, not as evils to be deprecated, but as resources to be preferred to the system of Washington! In order thoroughly to apprehend the condition of things that caused

* Life and Letters of George Cabot, 287, 300.

an attempt to preserve peace to result in the downfall of the party to which the President who made the attempt belonged, one should study carefully this "therefore." A mind of such temper that from such premises it could derive such a conclusion was totally unfit to be trusted with the administration of the government. It was bound to play the part of a Don Quixote. That Adams refused to play such a part, that his vision was too clear and his judgment too free from the prejudices of the Hamiltonian Federalists to make him regard windmills as serious menaces to the government, is the reason that the Hamiltonian Federalists attacked him, and that he and the great party to which he belonged were beaten in 1800.

Hamilton's attitude towards war with France before and after the X, Y, and Z mission.

It is interesting to note the contrast between the attitude of Hamilton towards war with France before the X, Y, and Z mission and after. It is not unlikely that he was influenced by personal considerations. He was second in command in the army that was to fight France. When we learn the colossal scale on which visions of military achievements were floating before his mind it is impossible not to believe that they had something to do with increasing his desire for a war which would make their realization possible. He was in correspondence with Don Francesco Miranda, a citizen of Caracas, who in January, 1798, presented to the British govern-

ment a plan drawn up by representatives from Mexico and the South American provinces, one article of which provided for a permanent defensive alliance between England, the United States, and South America. On August 22, 1798, Hamilton in a letter to Miranda said that the latter had long known that the writer's sentiments were favorable to Miranda's schemes.* On the same day he wrote to Rufus King, our minister to England, saying that he wished much that the "enterprise in question might be undertaken"; that "he should be glad that the principal agency was in the United States, they to furnish the whole land force, if necessary"; that "the command in this case would very naturally fall upon him," and that he hoped he would disappoint no favorable expectations; that, though this country was not quite ready for the undertaking, we were ripening fast, and that he had some time since "advised certain preliminary steps to prepare the way consistently with national character and justice." And when we know that King was in hearty sympathy with Miranda's schemes; that his correspondence with Timothy Pickering shows that the latter was acquainted with them;† that Hamilton unfolded his plans to Harrison Gray Otis, a leading Federalist in the House of Representatives, it becomes easy to believe that Hamilton's dreams of conquest may

* Hamilton's Works (Lodge's Edition), VIII., 505, 506.
† Life and Correspondence of Rufus King, II., 284, 305.

have exerted an appreciable influence upon the measures of the Federalist party.*

Adams' nomination of Vans Murray as envoy to France was in perfect harmony with the wishes of the masses of the Federalist party. Only a small number of them were influenced by the belief in the "crisis" which was held by the Hamiltonian Federalists with such intensity—the belief that the enemies of all government

The Federalists generally approve of the mission to France.

* Hamilton's letter to Otis (January 26, 1799) is suggestive: "As it is every moment possible that the project of taking possession of the Floridas and Louisiana, long since attributed to France, may be attempted to be put in execution, it is very important that the executive should be clothed with power to meet and defeat so dangerous an enterprise. Indeed, if it is the policy of France to leave us in a state of semi-hostility, 'tis preferable to terminate it, and, by taking possession of these countries for ourselves, to obviate the mischief of their falling into the hands of an active foreign power, and, at the same time, secure to the United States the advantage of keeping the key to the western country. I have long been in the habit of considering the acquisition of those countries as essential to the permanency of the Union, which I consider as very important to the welfare of the whole. If universal empire is still to be the pursuit of France, what can tend to defeat the purpose better than to detach South America from Spain, which is the only channel through which the riches of Mexico and Peru are conveyed to France? The executive ought to be put in a situation to embrace favorable conjunctures for effecting that separation. 'Tis to be regretted that the preparation of an adequate military force does not advance more rapidly. There is some sad nonsense on this subject in some good heads. The reveries of some of the friends of the government are more injurious to it than the attacks of its declared enemies."—Hamilton's Works (Lodge's Edition), VIII., 523, 524.

within the United States were so numerous and powerful as to make them a serious menace to the peace of the country. The followers of Hamilton in the Senate, therefore, saw that opposition to the policy of Adams was useless. Moreover, acting on the theory that it was expedient that the executive should be strengthened as much as possible, they had maintained, from the organization of the new government, that the Senate had no right to sit in judgment on the policy of nominations, that its duty was confined to a consideration of the fitness of the person nominated.* In a conference with the President, the Senate committee to which the nomination was referred only endeavored to persuade him to withdraw the nomination of Murray and substitute a commission of three. Adams finally decided to act on the suggestion. Withdrawing his first nomination, he nominated three persons (February 25, 1799), Chief Justice Oliver Ellsworth, Patrick Henry, and Vans Murray, to be joint commissioners to France. Henry declining, Governor Davie of North Carolina was appointed in his stead. The details of the story how the friends of Hamilton in and out of the cabinet undertook to thwart the President—to prevail on him to postpone the mission indefinitely, perhaps to defeat it altogether; how, in their fondness for Quixotic enterprises, they tried to prevent John Adams, of all men in the world, from

Three commissioners nominated.

Attempts to postpone the mission.

* Life and Letters of George Cabot, 235, 240-2.

doing what he conceived to be his duty—need not detain us here. As some of their reasons for delaying the departure of the commissioners had some ground, Adams did not order them to sail until October. But on the morning of October 16, without consulting his cabinet, he ordered that their instructions should be put in final shape, and that a frigate should be got in readiness to take them not later than November 1. They sailed November 5.

The appointment of this mission proved fatal to the Federalists, causing a breach which disrupted the party and showed that its time to be overthrown had come.

Work of the Federalist party summarized.

It had been a great party and it had done a noble work. It had found the country with only the shadow of a government: it had created one with power enough to provide for the needs of the nation. It had converted the lifeless letter of the constitution into a living system of government. It had "touched the dead corpse of public credit and it sprang into life." It had kept the country in the strait and narrow path of neutrality when to depart from it would have been fatal to the young government. But its work was done. The men who had led it since the organization of the government had little faith in the possibility of republican government to begin with, and that faith had grown less and less until they had come to think that the one hope of realizing it lay in war with France. An idea so un-American, so utterly out

of harmony with the spirit of American institutions, made the party that entertained it unfit to be longer trusted with the destinies of the young republic.

Fortunately for the country the official leader of the party was a strong man. When our minister had been driven from France he did not allow a sense of national dignity to prevent him from sending three special envoys thither. When these in turn had been insulted, he did not permit fear of France to cause him to forget what was due the country. The man who had defied England in 1775 was ready to defy the conquerors of continental Europe in 1798. But to refuse to send a minister after France had so emphatically declared her wish to receive one, to go to war for a mere point of etiquette or for the more absurd reason that it was dangerous to this country to be at peace with France, was not consistent with his ideas of the public interests. When, however, he sent the mission, he split the party into two irreconcilable factions and made his own re-election impossible.

His action, as we have seen, subjected him to the fiercest and most vindictive criticisms from the leaders of the party. Hamilton wrote a pamphlet criticising him in terms that fairly exposed its author to punishment under the Sedition Law. But Adams' verdict upon his own conduct is the verdict of history. In a letter to James Lloyd, written in 1815, he said: "I will defend my mission to France as long as I have an eye to direct my hand, or a

Judgment of history upon Adams' French mission.

finger to hold my pen. They were the most disinterested and meritorious actions of my life. I reflect upon them with so much satisfaction that I desire no other inscription over my gravestone than, 'Here lies John Adams, who took upon himself the responsibility of peace with France in the year 1800.'"*

*Life and Writings of John Adams, X., 113.

CHAPTER XXII.

THE REVOLUTION OF 1800.

IN accordance with the law of 1798 authorizing the President to give instructions to the commanders of public armed vessels to capture any armed French vessel, the United States frigate "Constellation" captured a French frigate, "L'Insurgente" (February, 1799), after a three hours' pursuit and a fight in which the French lost twenty killed and forty-six wounded, while the casualties of the Americans were only four. About a year later, the same ship gained a decided victory over the French frigate "La Vengeance." During the summer, also, a number of French privateers had been taken by American cruisers.

The *quasi*-war with France.

These victories undoubtedly increased the desire of the French government to restore friendly relations with the United States. When the envoys reached Paris (March 2, 1800) they were warmly received, and without delay they entered upon negotiations.

A difficulty immediately appeared which threatened to break up the negotiation. The Americans were instructed to insist upon the renunciation of the old treaties and also upon an indemnity for spoliation of American commerce as indispensable provisions of any treaty which might be negotiated. But the French commissioners

The negotiation with France in 1800.

were unwilling either to relinquish the treaties of 1778 or to pay indemnities. The French finally (in August, 1800) offered the alternative of continuing in force the old treaties with provisions for mutual indemnities or making a new treaty without indemnities.

A convention agreed upon.

The peremptory character of the instructions of the Americans made it impossible for them to accept either of these offers. They were compelled either to break off the negotiation or make a temporary arrangement which would enable the American government to resume peaceful relations with France and which it might approve or reject as it saw fit. In October a convention was agreed upon leaving the question as to indemnity and the binding force of the old treaties, which meanwhile were to be inoperative, to future negotiations; providing for the mutual restoration of all captured property, French or American, not already condemned by either party; and for the mutual payment of debts whether they were owed by either of the governments or by individuals.

The convention as modified by the Senate.

When in December, 1800, the convention was submitted to the Senate, the Federalist senators who had been opposed to the mission struck out the article which referred the treaties of 1778 and indemnities to a future negotiation. Adams ratified the convention without this article, although he preferred it, as he informed the Senate, in its original form.

When the convention was submitted to Napoleon, who was then at the head of the French government, he added a proviso to the effect that the expunging of the article relating to future negotiations should be understood as an abandonment of the claims of both sides, thus making the convention the equivalent of a new treaty without indemnities. In this form it was finally ratified by the United States. To free itself from the embarrassments of the treaties of 1778, the American government gave up its just claims to indemnity for French spoliation of American commerce.

Napoleon's proviso.

If the object of this history were to delineate the characters of the public men of the country rather than to follow the fortunes of its political parties, it would be necessary at this point to give a detailed account of the quarrels between Adams and his cabinet, and seek to measure out the proper portion of praise and blame. We should have to tell how Pickering, Wolcott, and McHenry kept their positions as confidential advisers of a President whose plans and policy they were trying to defeat. We should have to tell how they imparted the knowledge which they acquired in the confidential discussions of the cabinet to Alexander Hamilton, when they knew that he intended to use it to injure the reputation of the man to whom they owed their positions and whom they were professing to serve.

There is one point, however, of a semi-personal nature that we cannot avoid discussing. To whom was

the overthrow of the Federalist party due? Was it due to Adams' lack of tact and judgment, or was it due to the lack of judgment of the Hamiltonian Federalists, and especially of Hamilton himself?

The two wings of the Federalists.

At this stage of our story the answer to this question ought not to be in doubt. The Federalist party was composed of two wings which differed from each other almost as widely as did the more moderate Federalists from the Republicans. The radical wing, headed by Hamilton, were profoundly convinced that the country was seriously menaced by dangers that threatened the very foundations of our social system; the moderate element, represented by John Adams, John Marshall, and the Southern Federalists generally, suffered from no such delusion; they were Federalists in that they accepted the broad construction of the constitution, not only as expressing its true meaning, but as conducing to the best interests of the country, and in that they did not share in the optimistic delusions of Democrats like Jefferson and Gallatin.

They agree as to foreign policy for some time after Adams' election.

The radicals, as we may term them, formed a very small minority of the party. Fisher Ames, who was one of its typical representatives, said that there were not more than five hundred men in the country who were of his way of thinking. He was probably right. But this small minority, through the great ability of its leader, Alexander Hamilton, and through the influence he was able

to exert over Washington, determined in the main the policy of the country up to the election of Adams. For some time after the election of Adams there was no occasion for divergence between the two wings of the party. From the point of view of the believers in a "crisis," as well as from that of the President and of men like John Marshall, neutrality between the warring nations of Europe was so extremely desirable as to make it proper to send a new mission to France after the rejection of Pinckney. (But many of the Hamiltonian Federalists, Fisher Ames, George Cabot, Timothy Pickering, Oliver Wolcott, and Theodore Sedgwick, for example, were opposed to it.) *

They disagree as to war and as to the amount of military preparation desirable

Nor did the two wings of the party come to the parting of the ways immediately after the failure of this mission. The difference between their tendencies was indeed clearly manifest. The radicals wanted to declare war, but the moderates would not consent to it. The radicals also wanted to make much more extensive preparations for war than the moderates would permit. On March 17, 1798, Hamilton wrote to Pickering that our military establishment ought to be increased to twenty thousand men and a provisional army of thirty thousand provided for.† The Alien and Sedition laws were also primarily the work of the radicals; for, although they

* Gibbs' Administrations of Washington and Adams, *passim*; Fisher Ames' Works; Life and Letters of Cabot, etc.

† Hamilton's Works (Lodge's Edition), VIII., 476, 478.

received the signature of the President, though no Federalist of note protested against them except John Marshall, the difference between the attitude of Adams and that of Hamilton towards them is clear: Adams sent not a single alien out of the country, while Hamilton thought "the mass of them ought to be obliged to leave." *

The radicals attempt to commit Adams to a war policy.

In October, 1798, Pickering requested Adams (who was then at his home in Massachusetts) to authorize heads of departments to determine what aliens should be sent out of the country. Adams declined. The unanimity, therefore, of the Federalists in the famous session of Congress which terminated in the summer of 1798 was more apparent than real. As long as the question was as to defensive war they were a unit; indeed it may be said that all parties were of one mind. But upon the question of offensive war there was a fundamental difference of opinion. Although the radicals had been unable to prevail upon Congress to declare war, they were determined to commit the government to a policy which would make war inevitable. Aided by Hamilton, Wolcott had prepared a speech which Adams was to deliver in Congress in December, 1798, that contained the following paragraph: "But the sending of another minister to make a new attempt at negotiation would, in my opinion, be an act of humiliation to which the United States ought not to submit

*Hamilton's Works (Lodge's Edition), VIII., 490.

without extreme necessity; no such necessity exists." * Adams declined to say any such thing. He substituted a paragraph which showed how wide was the divergence between him and the Hamiltonian members of his cabinet: "Harmony between us and France may be restored at her option. But to send another minister without more determinate assurances that he would be received would be an act of humiliation to which the United States ought not to submit. It must therefore be left to France to take the requisite steps." †

Although the radicals severely criticised this paragraph, they did not abandon their plan. They had worked themselves into a state of mind which caused them to believe that the very life of the nation depended on the possibility of purging the country from the poison of French and American Jacobinism. This could be done effectively only by going to war with France. War with France would array the friends of order in a compact mass against the enemies of all government, not only in France, but in our own country, and enable them to take effective measures for rescuing American society from its deadly perils.

In any event, it was the duty of the government to resort to extreme measures. In a remarkable letter to Dayton, Speaker of the House of Representatives, Hamilton outlined his programme. Despite the success of the Federalists at the

Hamilton's letter to Dayton.

* Gibbs' Administrations of Washington and Adams, II., 171.
† Life and Works of John Adams, I., 537.

recent election, he said, there were symptoms which indicated that though something might "have been gained on the side of men of information and property, . . . more had probably been lost on that of persons of a different description." It would be wise in the supporters of government to act on the supposition that "the opposers of government are resolved, if it should be practicable, to make its existence a question of force." It would be an unpardonable mistake on the part of the Federalists, when they were in possession of all the constitutional powers, not to exert them "to surround the constitution with more ramparts." They ought to create an army of government officials—Hamilton recommended their appointment in every county of every state—to look after the execution of the laws which were "obstructed by the indisposition of the local magistrates in some states." These "conservators of the peace would be essential as well to the energetic execution of the laws as to the purposes of salutary patronage." The military force of the country ought to be kept "on its actual footing" whether there was to be a war with France or not,—unless peace was made between Great Britain, France, and Spain, in which event a small reduction ought to be made. If possible, the constitution ought to be so amended as to enable the government "on the application of any considerable part of a state . . . to erect it into a separate state. . . . The subdivision of the great states is indispensable to

the security of the general government and, with it, of the Union." More rigorous sedition laws ought to be passed—laws which would make all writings which were libels at common law cognizable in the courts of the United States, provided they were levelled at any officer of the United States. Such officers ought "not to be left to the cold and reluctant protection of the state courts, always temporizing, and sometimes disaffected." But vigor in the legislative branch of the government would not suffice. "What avail laws which are not executed? Renegade aliens conduct more than one of the most incendiary presses in the United States—and yet, in open contempt and defiance of the laws, they are permitted to continue their destructive labors. Why are they not sent away? . . . If the President requires to be stimulated, those who can approach him ought to do it." *

Fortunately for the country, John Adams could not be stimulated up to Hamilton's ideas of vigor, and because he could not he was beaten in the presidential election of 1800 and the Federalist party was overthrown. As the votes he received were only eight less than those cast for Jefferson and Burr, it is safe to assume that had it not been for the opposition of the believers in a "crisis" he would have been elected.

It may of course be maintained that a President of

* Hamilton's Works (Lodge's Edition), VIII., 517–522.

tact might have sent the mission to France without making an open breach with the friends of Hamilton.

Would the exercise of tact have enabled Adams to disarm opposition?

But, in view of all the facts, this is very doubtful, to say the least. The radicals differed with Adams not only as to foreign affairs but as to domestic matters. They had gradually come to look upon England as fighting the battles of the civilized world, and therefore as deserving at least the moral support of all nations which were devoted to the interests of civilization. They regarded the Republican party as having the same tendencies as the democracy of France, and therefore as requiring a standing army to hold it in check. In view of these facts, the conclusion would seem to be that Adams' lack of tact only widened a breach which there was no way of preventing.

What the result of disarming the radicals might have been.

If Adams could have disarmed the opposition of the radicals, it is easy to believe that the course of American history for the next quarter of a century might have been widely different. With the exception of the period when the patriotism of the country rallied to the support of the party that seemed for the time the special guardian of the nation's honor, the House of Representatives was always under the control of the Republicans after the organization of that party. But if the Federalism of John Marshall, for example, had determined the policy of the Federalist party, it is certainly possible to doubt

whether there would have been any Republican party at all. If the measures of the government had been taken solely with a view to vindicating for it the powers conferred upon it by the constitution and of promoting the best interests of the people, if there had been no thought of increasing its powers at the expense of those of the states, and of strengthening it in order that it might successfully cope with the turbulent elements of society in the struggle that the radicals were sure was to come, no one would have supposed that the party in power had any sympathy with monarchy. It was the peculiar opinions of the radicals that called the Republican party into existence. Although it is too much to say that there would have been no such party if the opinions of the moderate Federalists had prevailed in the government, it is reasonable to suppose that it would have been hopelessly in the minority in every branch of the government.

If, then, Adams could have won to his support the men who really agreed with him as to the foreign and domestic policy of the government, he would have been re-elected in 1800. The election in 1800 was not a victory of Republicanism over moderate Federalism; it was a victory over the Federalism of Alexander Hamilton. A Federalist paper, Dennie's Portfolio, contained in 1803 the following paragraph: "A democracy is scarcely tolerable at any period of national history. . . . It is on trial here, and the issue will be civil war, desolation,

and anarchy." It was the Federalism expressed in this paragraph that was beaten in the election of 1800.

The result of the election in 1800.

The Republican victory did not decide who was to be President. Burr and Jefferson received the same number of votes, and therefore the House of Representatives, casting its vote by states, had to choose between them.

The Federalists unable to control a majority of the states.

Although the Federalists had a decided majority in the House, they could not control a majority of the states for the purposes of this election. Two Federal representatives, one from Georgia and one from Maryland, would not cast their votes in opposition to the known wishes of their constituents. Their decision gave Georgia to the Republicans and equally divided the vote of Maryland. With Georgia Republican and Maryland divided, the Federalists had a majority in six states—New Hampshire, Massachusetts, Rhode Island, Connecticut, Delaware, and South Carolina—and half of the votes of two others—Vermont and Maryland. They were therefore in a position, in any event, to prevent the election of Jefferson, and possibly, by detaching some of the Republican states from Jefferson, to effect the election of Burr in case they decided to prefer him as President to Jefferson.

We know what the Federalists thought of their antagonists—that they were disorganizers, anarchists who pursued the same objects in this country that the democrats of 1793 had sought to realize in France. The

opportunity of the Federalists to strike down the man whom they considered as the head and front of all this evil subjected them, therefore, to a great temptation.

Should they elect Jefferson, whom they regarded as the very life and soul of doctrinaire anti-Federalism and anarchic, French-revolution Jacobinism? It is hardly too much to say that the Republican House of Representatives in 1865 would scarcely have loathed more intensely the idea of making Jefferson Davis President of the United States than did the Federalist House in 1800 the idea of making Thomas Jefferson President. Should they disregard the constitution? Should they prevent an election of either Jefferson or Burr, and compel a new election by the people, in the hope that in the chances of politics they might have better luck at the next election, and in the certainty that the government in the mean time would be administered by a man of their own party? To do that would have been to make war upon the very principle that had called the Federalist party into existence—the principle of deference to legally constituted authorities, of respect for government. Should they vote for Aaron Burr, the unprincipled demagogue, the man whose one purpose in life was to promote the interests of Aaron Burr?

Federalist hatred of Jefferson.

These were the alternatives between which they had to choose, and it is not to be wondered at that they hesi-

tated between them; that there were Federalists who believed that the gravity of the emergency justified and demanded heroic treatment—treatment no less heroic than that of setting aside the constitution for the sake of what they believed to be the principle of the constitution: preventing an election that the government might not pass into the hands of men who would use their opportunity, as the Federalists believed, to destroy the constitution. It is still less to be wondered at that many leading Federalists deliberately concluded that even Aaron Burr, odious and unprincipled as he was known to be, was to be preferred as President to a man who embodied, as they believed, all that was bad in politics.

Federalist opinion of Burr.

As soon as it was known that the election was to devolve upon the House of Representatives, the Federalist newspapers began to discuss this alternative: either to prevent a constitutional election by balloting without a choice till the 4th of March, or to elect Burr. In the event of the former, it was proposed to pass a law making the Chief Justice of the Supreme Court or the Secretary of State President *pro tem.* But this wild measure, as Gouverneur Morris called it, was given up before the middle of December, and then the Federalists began to think seriously of taking up Burr. They believed him to be "ambitious, selfish, profligate"; they thought his ambition was of the worst;

they believed that his "selfishness excluded all social affections," and that his "profligacy defied all decency and was unrestrained by any moral sentiments." They regarded him as a bankrupt both in character and property, but they feared "as much from the sincerity of Jefferson as from Burr's lack of character." They believed that Jefferson was an enemy of the measures that had given the country all it possessed of national character, prosperity, and respectability; that he was a "sincere and enthusiastic democrat," persevering in the pursuit of his object, and unscrupulous as to the means of attaining it; that he was devoted to the views of those men in his state whose unceasing purpose it had been and was, as they said, "to reduce *in practice* the administration of the government to the *principles* of the old Confederation"; that he was "servilely devoted to one foreign nation, under any form of government and pursuing any system of measures however hostile to this country, and unrelentingly hostile to another nation," and these the two nations with which the closeness of our relations made it most important to preserve an exact neutrality.* With such an opinion of the two men, they thought it best to support Burr, especially since they hoped in this way to detach him from his party, or at least to sow the seeds of dissension between its Northern and Southern wings.

* See letter of Sedgwick to Hamilton. Hamilton's Works (Hamilton's Edition), VI., 511.

Fortunately Hamilton held a decidedly different opinion. He was, indeed, probably responsible for the defeat of the Federalists. Believing in all sincerity that Adams was unfit to be President, and enraged beyond endurance by Adams' contemptuous disregard of his opinions and by the President's reiterated and characteristic charge that he and the radicals belonged to a British faction (which contained quite as much truth as the charge which the Federalists were constantly making that their opponents belonged to a French faction), Hamilton had been exceedingly anxious to prevent the re-election of Adams if it could be done without endangering Federalist success. But in a journey through New England in the summer of 1800 he had found that Adams was so popular that it would be impossible to prevent the Federalists from supporting him. The only way to defeat him without defeating the party was to induce the New England Federalists to vote both for him and for Charles Cotesworth Pinckney,—the candidate who had been selected along with Adams by the Federalist members of Congress for President and Vice-President. If New England supported impartially both Adams and Pinckney, Hamilton hoped that Pinckney would receive more votes than Adams—which would have been the case in South Carolina had not Pinckney chivalrously refused to accept support that was withheld from Adams. To induce the Federalists

Hamilton's attempt to defeat Adams.

of New England to support Pinckney equally with Adams, Hamilton wrote a pamphlet intended for private circulation among a few friends,—in which he proved, if he proved anything, that Adams was not fit to be President at all. Aaron Burr got hold of the pamphlet and published it far and wide in the Republican papers—which doubtless contributed to the defeat of the Federalists.

When the results of the election were known, the madness that had deprived Hamilton of his judgment in his quarrel with Adams had left him, and he was again ready to subordinate every private consideration to the public good. He and Burr were nominal friends, while Jefferson was his bitter personal enemy. But believing that the country would be safer with Jefferson as President than with Burr, he wrote letter after letter to his friends in the House of Representatives entreating them to vote for Jefferson. To Bayard of Delaware he wrote: "For Heaven's sake, my dear sir, exert yourself to the utmost to save our country from so great a calamity." To Sedgwick: "I beg of you, as you love your country, your friends, and yourself, to reconsider dispassionately the opinion you have expressed in favor of Burr." In another letter to Bayard: "If the party shall, by supporting Mr. Burr as President, adopt him for their official chief, I shall be obliged to consider myself an isolated man. It will be impossible for me to reconcile

Hamilton uses his influence for Jefferson.

with my notions of honor or of policy the continuing to be of a party which will have disgraced itself and the country." * He exerted himself particularly with Bayard, who, as the single representative of Delaware, could cast the vote of the state for Jefferson, which, with the votes that Jefferson was sure to receive from the eight Republican states, would make him President.

When the balloting began (February 11, 1801), it seemed that the efforts of Hamilton had been exerted to no purpose. The six Federalist states voted for Burr; Vermont and Maryland cast no vote, since half of the representatives of each state were Federalists and they voted for Burr; and the other eight states voted for Jefferson. The balloting continued for a week with no change in the result.

There were four Federalists in the House—Bayard of Delaware, Baer and Craik of Maryland, and Morris of Vermont—any one of whom by voting for Jefferson could bring the deadlock to an end. These men were resolved not to risk the consequences of preventing any election, and when it had become clear that Burr could not be elected they determined to allow the election of Jefferson. Hoping to obtain "terms of capitulation," Baer, Craik, and Morris authorized Bayard to declare their purpose "upon the best terms that could be obtained." Bayard accordingly had an interview with Samuel Smith (in

Four Federalists decide to permit the election of Jefferson.

* Hamilton's Works (Lodge's Edition), VI., 573, 581, 587.

February), a prominent Republican from Maryland, in which he said that if certain points in the future administration could be arranged with Jefferson, he was authorized to say that three states would withdraw their opposition. Having been asked what the points were, Bayard said: "First, the public credit; secondly, the maintenance of the naval system; and thirdly, that subordinate public officers, employed only in the execution of details established by law, shall not be removed from office on the ground of their political character, nor without complaint against their conduct." On the next day, Smith informed Bayard that he had seen Jefferson and was authorized by him to say that the points mentioned by Bayard corresponded with his views and intentions, and that Bayard and his friends "might confide in the result." * On the next ballot (the thirty-sixth), Bayard and his friends from Vermont and Maryland put in blanks—which gave to Jefferson the vote of those two states and made him President.

In a letter to Hamilton after the election was over, Bayard told his friend that some days before election he had announced in a caucus of the Federalists his determination to withdraw his opposition to Jefferson. "You cannot well imagine the clamor and vehement invective to which I was subjected for several days. We had several caucuses.

Federalist caucuses.

* Davis' Life of Burr, II., 130, 132. Cf. a statement made by Jefferson. Works (Washington's Edition), IX., 209.

All acknowledged that nothing but desperate measures remained, which several were disposed to adopt and but few were willing openly to disapprove. We broke up each time in confusion and discord." *

Many years afterwards, Jefferson said that the election of 1800 was as real a revolution as the revolution of 1776. There was an element of truth in his assertion. In 1801, for the first time in the history of the country, the party in power did intensely and enthusiastically believe in what we have come to consider American ideas. The Republican leaders were profoundly convinced of the truth of the theory of democracy—that man is capable of self-government. That is why their accession to power was an event of such importance in the history of the world.

Revolution of 1800.

* For an account of the programme laid out by the Republicans in case the Federalists had prevented an election, see Adams' Gallatin, 248, 252; also Writings of Gallatin, I., 18, 23.

CHAPTER XXIII.

JEFFERSON AND HIS CABINET.

THE man who took the oath of office as President of the United States in 1801 believed that his administration was to introduce a new era in the history of the world. For the first time, he thought, men were to see a government for the sake of the governed. When government was devoted to such a purpose he believed that its customary incidents—armies, navies, national debts, banking systems, internal taxes, wars—could be almost entirely dispensed with. The confident optimism and serene disregard of the teachings of the past which are so characteristic of Americans found their perfect expression in Jefferson; he saw in the selfishness of the governing classes a satisfactory explanation of the miseries of mankind.

Jefferson's optimism.

It never occurred to him that his administration should be made to signalize itself *merely by its rigid and consistent adherence to a strict construction of the constitution.* As Hamilton hoped to increase the powers conferred upon the government by the constitution through construction, so Jefferson, consciously or unconsciously, aimed to decrease them by disuse.

The changes which Jefferson hoped in this way to make in the constitution related both to foreign and to domestic matters. Considering the state governments

to be the guardians of the liberties of the people, he thought the general government should exercise none of the powers conferred upon it by the constitution when such exercise tended to increase its powers at the expense of those of the states. He did indeed use language which implied that he thought the constitution had intended to confine the general government to foreign affairs, leaving all matters of domestic concern to the states. In an important letter to Gideon Granger in August, 1800, he said: "The true theory of our constitution is surely the wisest and best—that the states are independent as to everything within themselves, and united as to everything respecting foreign nations. Let the general government be reduced to foreign concerns only, and let our affairs be disentangled from those of all other nations except as to commerce, which the merchants will manage the better the more they are left free to manage for themselves, and our general government may be reduced to a very simple organization and a very inexpensive one—a few plain duties to be performed by a few servants."* Twenty-one years later, in 1821, he repeated the same idea, although in not quite so unqualified a form: "The people to whom all authority belongs have divided the powers of government into two distinct departments, the leading characters of which are foreign and domestic;

Jefferson's theory of the proper work of the federal government.

* Writings of Thomas Jefferson (Ford's Edition), VII., 421, 422.

and they have appointed for each a distinct set of functionaries. These they have made co-ordinate, checking and balancing each other, like the three cardinal departments in the individual states—each equally supreme as to the powers delegated to itself, and neither authorized ultimately to decide what belongs to itself or to its copartner in government; as independent, in fact, as different nations. A spirit of forbearance and compromise, therefore, and not of encroachment and usurpation, is the healing balm of such a constitution."* Three years later, in 1824, he repeated the same opinion: "The federal is in truth our foreign government, which department alone is taken from the sovereignty of the separate states." †

But Jefferson was not in the habit of expressing himself with scientific accuracy, and the evidence makes it clear that he did not mean what an accurate writer would have meant by such language. For he stated the same opinion in 1787 in speaking of the sort of constitution he thought the country ought to have, although in the same letter he expressed his disapproval of the constitution. "My own general idea was," he wrote in 1787, "that the states should severally preserve their sovereignty in whatever concerns themselves alone, and that whatever may concern another state or any foreign nation should be made a part of the federal sovereignty."

* Jefferson's Works (Washington's Edition), VII., 213, 214.
† Ibid., 336.

It is clear, therefore, that in saying that the general government was the foreign, and the state governments were the domestic, branch of our governmental system, he was not expounding what he thought the framers of the constitution intended them to be, but what he thought they ought to be and what, by precedent and construction, they could be made to be. His opinion of the excise in 1793 is a further confirmation of this conclusion. He said that the excise tax was an infernal one; that the first error was to admit it by the constitution; the second, to act on that admission. Congress was not justified in laying an excise by the fact that it had the power. For the imposition of such a tax, he believed, tended to increase the powers of the general government at the expense of those of the states.

From the quotations already made, in connection with a passage in his inaugural address, we are enabled to define the limit to which Jefferson thought the power of the national government should be restricted, whether or not the constitution gave it the right to exceed it. His theory was that, except to encourage commerce and agriculture and diffuse information (these exceptions were made in the inaugural address), the general government should undertake no domestic functions; these should be left to the states.

With the above trifling exceptions, the whole function of the national government was confined to the management and control of our foreign affairs. "Let the

general government be reduced to foreign concerns," he had written to Granger. But what was his theory of foreign concerns? His private correspondence contains the answer to this question. In a letter to Thomas Paine written March 18, 1801, he said: "Determined as we are to avoid, if possible, wasting the energies of our people in war and destruction, we shall avoid implicating ourselves with the powers of Europe even in support of principles which we mean to pursue. We believe we can enforce these principles as to ourselves by peaceable means, now that we are likely to have our public counsels detached from foreign views." * How were we to enforce our principles by peaceable means? A letter to a Dr. Logan written three days later contains the answer: "Our commerce is so valuable to them that they will be glad to purchase it when the only price we ask is to do us justice. I believe we have in our hands the means of peaceable coercion; and that the moment they see our government so united as that we can make use of it, they will, for their own interest, be disposed to do us justice." †

Jefferson's theory of foreign "concerns."

Are we then to take these statements as indicative of Jefferson's whole theory of "foreign concerns"? His answers to this question are conflicting. Sometimes he talks as though peaceable coercion could be exercised on

* Writings of Thomas Jefferson (Ford), VIII., 18.
† Ibid., 23.

all nations; at others he betrays a consciousness that there is but one nation whom commercial restrictions could seriously affect. In a letter to Edward Rutledge written June 24, 1797, he said that the favorite engine of the Republicans when England insulted us was commercial regulations. But when France insulted us, "as we have no commerce with France the restriction of which would press on them, they wished for negotiations."* Interpreting his words by his actions, it seems clear that he relied on commercial restrictions as a substitute for war only in case of England; if other nations insulted us, he meant by diplomacy, by balancing one nation against another, by all sorts of tactful management, by passive endurance if necessary, to avoid war.

Explanation of Jefferson's theories.

We know why Jefferson took this position. He hated armies, navies, wars, banking systems, internal taxes, because of his devotion to democracy. To promote the interests of the entire people, not of a favored few only, to give to each individual the opportunity to make the most of himself, seemed to Jefferson the true ideal of government.

It had been one of his cardinal objections to Hamilton that the funding and banking system of the latter had furnished the means of corrupting Congress, and Jefferson believed that the armies and navies which the Federalists were so eager to obtain had a double object

* Writings of Thomas Jefferson (Ford's Edition), VII., 153.

n view: first, to fasten a permanent debt upon the government, and thus perpetuate the means of corrupting Congress; and secondly, to have ready at hand a force which the Federalists might employ in putting down all opposition to their measures. The same reason led him to believe that the general government ought not to impose internal taxes, and that it ought to confine itself to "foreign concerns." He was a states' rights Republican—and he was a states' rights Republican not only because he was inclined, like most of the Americans of his time, to look upon the state as the country of its citizens, but also because he thought the liberties of the people would be less endangered and their interests better promoted by the states than by the general government. By leaving the states as much power as possible he believed that the intelligent self-interest of their citizens would cause them to use it to promote their own welfare. He was opposed to war not only because of its waste of life and money, but because of its hostility to liberty. War would lead to armies, navies, a national debt, banking systems; it would compel the national government to exercise doubtful constitutional powers; it would tend to centralize and monarchize the government.

Evidently there were two questions which Jefferson had to answer before he could prove that his Republicanism and his Democracy could dwell together in peace: First, could the general government, in confining its

domestic functions to the promotion of commerce and agriculture and the diffusion of knowledge, do all the things that the interests of the people demanded? Might it not be compelled to choose between a sacrifice of the theories of Republicanism and a sacrifice of the imperative interests of the people? Was it true that the interests of the people required the national government to leave to the states as much power as possible? Secondly, could England be forced to respect our rights by commercial restrictions? And was there no danger that nations whom we could not reach by embargo and trade prohibitions might, in spite of all our diplomacy, be guilty of intolerable invasions of our rights? The last question derived peculiar significance from the fact that Jefferson was no absolute ruler. However clear he might be that peace under any circumstances was better than war, he could not count on a similar temper in the American people. Perhaps the very democracy for whose sake Jefferson was so anxious to avoid war might compel the government to incur its hazards rather than continue to submit to insults that had become intolerable.

Were Jefferson's states' rights Republicanism and Democracy consistent?

Jefferson's cabinet consisted of James Madison, Secretary of State; Albert Gallatin, Secretary of the Treasury; Henry Dearborn of Massachusetts, Secretary of War; Robert Smith of Maryland, Secretary of the Navy; and Levi Lincoln of

Jefferson's cabinet.

Massachusetts, Attorney-General. Gideon Granger of Connecticut was made Postmaster-General, but that officer did not then have a seat in the cabinet. Of the Secretary of War, and the Secretary of the Navy, and the Attorney-General it is sufficient to say that they were men of average ability who performed their duties in a fairly intelligent manner. The men who gave character to the Administration, who made it, notwithstanding the mediocrity of three of its members, one of the ablest in American history, were the President himself, the Secretary of State, and the Secretary of the Treasury. They ruled the country for the next eight years.

Madison.

Madison belonged naturally to the moderate Federalists, the Federalists of the stamp of the Pinckneys, John Adams, and John Marshall. He was driven from them by the radical measures and views of Hamilton. In one particular only was the creed of Jefferson entirely natural to Madison's mind: he believed intensely in the coercive power of commercial restrictions.

Gallatin.

The third member of this triumvirate, Albert Gallatin, was one of the most remarkable men in American history. A native of Geneva, Switzerland, a member of an old and aristocratic family, he showed the bent of his mind in a decisive way when he was about 18 years old. Having graduated from the academy at Geneva, his grandmother urged him to take a commission as lieutenant-colonel in the military ser-

vice of her friend, the Landgrave of Hesse. With more directness than politeness he replied that he would not serve a tyrant. It was doubtless his discontent with the political conditions of his native country that led him, without the knowledge of his family, to leave his home and come to this country in 1780. His first appearance in politics was as a member of the Antifederal convention which met September 3, 1788, in Harrisburg, Pennsylvania, of which state Gallatin had become a citizen. His political tendencies at that time are clearly shown by a resolution drawn by him which declared that in order to prevent a dissolution of the Union and to "secure our liberties" it was necessary to obtain "in the most speedy manner" a revision of the constitution. In 1790 he was elected to the state legislature, in which body, despite the fact that his party was in the minority, he very soon acquired an extraordinary influence. We have a remarkable illustration of this in his election by a Federalist legislature in 1793 as senator of the United States. The Senate refused to permit him to keep his seat, on the ostensible ground that he had not been a citizen for nine years; more probably, however, because the followers of Hamilton did not care to have a man in the Senate who had introduced a resolution in the legislature of Pennsylvania (January 14, 1791) which declared that the excise law was "subversive of the peace, liberty, and rights of the citizen." In 1794, only about three days before the election, his name was presented, without his

own knowledge, as a candidate for the House of Representatives. He was elected, and accordingly the next year he entered upon what was in some respects one of the most remarkable careers known to our Congressional history. His first session was made famous by the debate over Jay's treaty. Notwithstanding the great obstacles under which he labored, speaking with a very bad pronunciation in a foreign language, notwithstanding the great powers of some of his own party friends, among whom was Madison, the ability with which he presented the Republican side of the question at once gave him a position of leadership. His speeches on the constitutional powers of the House were universally considered the best on either side.

But it was not alone in the discussion of broad constitutional questions that Gallatin showed his great ability. He had one of those rare minds that seem equally at home whether in dealing with the fundamental principles of constitutional law or the intricate details of finance. And he succeeded at once in giving the House a degree of control it had not possessed before over the finances of the government by getting a Committee of Ways and Means appointed, and insisting that Congress make only specific appropriations. When the question as to a navy came up, he indicated the position he was to take with such effect as Secretary of the Treasury by contending that it was more important for the country to pay its debts than it was to create a navy.

He showed, however, very clearly his lack of orthodoxy as a Jeffersonian Republican by more than hinting that he was not opposed to the creation of a navy as a matter of permanent policy. "I am sensible," he said in 1796, "that an opinion of our strength will operate to a certain degree on other nations. But I think a real addition of strength will go farther in defending us than mere opinion. If the sums to be expended to build and maintain the frigates were applied to paying a part of our national debt, the payment would make us more respectable in the eyes of foreign nations than all the frigates we can build. To spend money unnecessarily at present will diminish our future resources, and, instead of enabling us, will perhaps render it more difficult for us to build a navy some years hence."*

Nor was this the only point in which Gallatin diverged from the opinions of Jefferson. Indeed his opinion as to a navy was the result of his lack of faith in the Virginia doctrine of the coercive power of commercial restrictions. As much opposed to war as Jefferson, believing that all wars except defensive wars are unjustifiable, he had no faith in the power of the government to cause its wrongs to be righted by non-importation laws and embargoes. It was the part of dignity and enlightened self-interest, in his opinion, for this nation calmly to pursue its course, in spite of the snarlings and snappings of the curs of Europe, unless they positively

*Annals of Congress, 1795–1796, 884.

made war upon us. But to cumber ourselves with debts and taxes to meet the dangers of possible wars was, in his eyes, to travel the same path along which the nations of Europe were wearily going, and therefore to reach the same termination.

Most important of all, there was nothing local or sectional about Gallatin's modes of thought. A Pennsylvanian by adoption, it was easy for him to escape the fallacy that vitiated so much of the political thought of the time, that the states had an inherent right to set aside unconstitutional laws of the national government. He doubtless hated the Alien and Sedition laws as bitterly as Jefferson did, but it would never have occurred to him to propose that such laws might be declared null and void by the state governments; he understood that such action would be revolutionary.

Nor did he agree with his Virginia friends in their constitutional theories. He was as confident as Hamilton that the right to attain certain ends implied the right to employ any means not forbidden by the constitution. He was therefore perfectly ready to try to get the national bank rechartered, and to propose extensive schemes of internal improvement. In a word, he was an intense Democrat, but not a states' rights Republican. Nothing to his mind stood in the way of national banks, internal-improvement schemes, annexation of territory, protective tariffs, but the question of expediency.

These, then, were the opinions of the three men whose minds determined the course of American history for the next eight years: Jefferson was a Democrat and also a states' rights Republican because he believed that only through states' rights Republicanism could the ends of Democracy be attained; Madison was both less of a Democrat and less of a states' rights Republican than his chief, holding but one of the opinions of Jefferson with orthodox intensity—his belief in commercial restrictions as a substitute for war; while Gallatin was a Democrat and a Democrat only, as free from the states' rights notions of his Virginia friends as a typical American of the last decade of the nineteenth century, but holding with all the fervor of Jefferson that men who are permitted to govern themselves will work out their own political salvation.

Did Gallatin or Jefferson or Madison most truly represent the American of the future?

An observer with a speculative turn of mind could have found material for interesting reflections in the question as to which of these three men really represented the American of the future. Was it Gallatin the Democrat, or Jefferson the Democrat and Republican, or Madison with his Federalist bearings? The question would have derived additional interest from the fact that the contrast between the opinions of Gallatin and Jefferson represented clearly marked differences within the Republican party. Says Joseph Story: "The Republican party then"—he is speaking of our period—"and at all other

times embraced men of very different views on many subjects. A Virginia Republican of that day was very different from a Massachusetts Republican, and the Antifederal [states' rights] doctrines of the former state then had and still have very little support in the latter state. I was at all times a firm believer in the doctrine of General Washington and an admirer of his conduct, measures, and principles during his whole administration. . . . I never wished to bring the government to a mere confederacy of states, but to preserve the power of the general government given by all the states in full exercise and sovereignty." *

Was it Massachusetts Democracy or Virginia Republicanism which was finally to prevail?

* Story's Life of Story, 128.

CHAPTER XXIV.

THE DILEMMA OF THE REPUBLICANS.

A FEW days after his inauguration, Jefferson wrote a letter in which he said that he hoped that the body of the nation, even that part which French excesses had forced over to the Federal side, would join the Republicans, leaving to the opposition only those who were pure monarchists, and who would be too few to form a sect. This hope, expressed in many letters, exerted an important influence upon his policy during the eight years of his two administrations. It determined the tone of his inaugural address: "Let us unite with one mind; let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things. And let us reflect that, having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long-lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful

Jefferson's desire to conciliate the Federalists.

His inaugural address.

shore; that this should be more felt and feared by some and less by others; that this should divide opinions as to measures of safety. But every difference of opinion is not a difference of principle. We are all Republicans, we are all Federalists." Jefferson knew very well that this was not what the extreme partisans of his own party expected. On March 31, he wrote: "I am sensible how far I should fall short of effecting all the reformation which reason would suggest and experience approve, were I free to do whatever I thought best; but when we reflect how difficult it is to move or inflect the great machine of society, how impossible to advance the notions of a whole people suddenly to ideal right, we see the wisdom of Solon's remark that no more good must be attempted than the nation can bear, and all will be chiefly to reform the waste of public money, and thus drive away the vultures who prey upon it, and improve some little on old routines." *

Republicans had condemned the levees and speeches of Washington as savoring of monarchy, and our diplomatic establishment as unnecessarily expensive. To do away with the levees, therefore, to communicate with Congress by message, to reduce the diplomatic establishment, was, in the eyes of Jefferson, an "improvement on old routines" which would not antagonize the "Republican Federalists" whom he hoped to win over to his party.

*Works (Washington's Edition), IV., 392.

In stating his reasons, in a letter addressed to the President of the Senate, for substituting a message for the speech with which the first two Presidents had opened Congress, Jefferson showed his desire to conciliate the moderate Federalists. Ignoring the real reason, that in making speeches to Congress Washington and Adams had imitated the monarchs of England, he said that he did it out of regard for the convenience of the legislature, the economy of their time, and so on. The same characteristic appeared repeatedly in the message itself. The Republicans were opposed on principle to internal taxes. But when Jefferson recommended their repeal, he did it for reasons which no Federalist would have objected to who agreed with Jefferson as to the facts. "Weighing all probabilities of expense," he said, "as well as of income, there is reasonable ground of confidence that we may now safely dispense with all internal taxes, and that the remaining sources of revenue will be sufficient to provide for the support of government," and to pay the interest and principal of the public debt within a shorter period than had been expected.

Jefferson's reasons for substituting a message for a speech, and for recommending a repeal of internal taxes.

In the paragraph immediately following, Jefferson showed his hand most clearly. "These views," he said, "of reducing our burdens are formed in the expectation that a sensible and at the same time a salutary reduction may take place in our habitual expenditures. For this purpose,

He recommends a reduction in expenses.

those of the civil government, the army and the navy, will need revisal. When we consider that this government is charged with the external and mutual relations only of these states; that the states themselves have principal care of our persons, our property, and our reputation, constituting the great field of human concerns, we may well doubt whether our organization is not too complicated, too expensive; whether offices and officers have not been multiplied unnecessarily, and sometimes injuriously to the service they were meant to promote." In other words, there had been an unnecessary multiplication of offices, because of the Federalist theory of the functions of the national government. Supposing that the general government had domestic functions to perform, that it had more than foreign "concerns" to attend to, that the state governments were not the domestic branch of our governmental system, the Federalists had multiplied offices to undertake work with which the national government ought to have nothing to do. But he did not state what was, to his own mind, the strongest argument against it. He did not object to the Federalist theory of government because it endangered liberty and tended towards monarchy, but because it was unnecessarily expensive. "Among these [officials] who are dependent on executive discretion, I have begun the reduction of what was deemed unnecessary. The expenses of diplomatic agency have been considerably diminished." After suggesting that Con-

gress should pass in review the offices that had been established by law, he continued: "Considering the general tendency to multiply offices and dependencies, and to increase expense to the ultimate term of burden which the citizen can bear, it behooves us to avail ourselves of every occasion which presents itself for taking off the surcharge; that it never may be seen here that after leaving to labor the smallest portion of its earnings on which it can subsist, government shall itself consume the whole residue of what it was instituted to guard."

Why the Federalist administrations were not more extravagant.

If it be said that had lack of economy been the sole ground of objection to the Federalist administrations there would have been little reason for criticism, the reply, from Jefferson's point of view, is twofold: Granting, as the facts compelled, that the current expenses of the government in 1800, including the expenses of the *quasi*-war with France, were only about $7,000,000, and that the average annual expenses for the preceding ten years, including payments on account of the public debt, had been only about $9,000,000, the credit for this condition was by no means to be given to the Federalists.* They were constantly urging measures which would have increased the expenses of the government far beyond that point, and were only prevented from passing such measures by the Republicans. The chief objection to their policy, however, was not its extravagance, but the motive that

*Compare Henry Adams' History of the United States, I., 253.

lay at the root of it. The fundamental motive of the Federalists was to increase the powers of the national government. As much economy as possible consistent with the attainment of that end, Jefferson probably believed,—at any rate it was the truth,—was the Federalist programme. But to have stated that opinion nakedly and bluntly would have been to excite unnecessary antagonism. He therefore confined himself to what he knew was popular ground.

The same characteristics appeared in his remarks on the judiciary system. "The judiciary system of the United States," he said, "and especially that portion of it recently erected, will of course present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several states, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the courts, and of those which were depending when additional courts and judges were brought to their aid."

Jefferson on the judiciary system.

The least objectionable thing about the judiciary system, from the point of view of the Republicans who believed in democracy, was its expensiveness. If they were right, it was radically wrong—wrong not here and there and in details, but fundamentally. The very conception of the

Republican theory of the judiciary.

Supreme Court, as it appeared in the constitution, was at war with the democratic theory. In Jefferson's own language, it was unelected by, and independent of, the nation. In 1800, the people declared that they disapproved of the administration of John Adams. But the constitution gave him the power of appointing a Chief Justice of the Supreme Court—John Marshall—who interpreted it in accordance with Federalist ideas for thirty-four years after the Federalists had been overthrown. From the point of view of democracy, a constitution which permitted such things did not so much provide for government of the people by the people, as for government of the people by rulers whom the people had chosen. Between such a constitution and a constitution which invested the power of appointment in a hereditary ruler there was of course a difference; but, from the Republican point of view, this difference was not essential. The constitution permitted a Chief Justice, who had been appointed by a President elected by one generation, to interpret it for another,—for a generation that emphatically disapproved of the President and of the man whom he had appointed. What difference did it make to the people for whom John Marshall interpreted the constitution whether the power to whom he owed his appointment was a hereditary ruler or a President elected by another generation of people? What difference did it make to the people in 1801 that the power to whom he owed his appointment was a man

chosen by themselves, since they had come to disapprove of their own judgment as expressed in 1796? When they changed their minds, could they not give effect to the change? Were they to be bound indefinitely by their own mistakes, to be compelled to follow their less enlightened rather than their more enlightened decision? To say that they were bound was indeed to use the language of the constitution of the United States, but not of the theory of democracy. The only way, therefore, from the point of view of democracy, to reform the Supreme Court was to reform it out of existence as it was then constituted. To leave the Supreme Court as the constitution left it, and attempt to meet the difficulty by passing a law providing for such an increase in the number of judges as would make the majority Republican, or to impeach enough of them so that those appointed in their stead would make it Republican, would not solve the problem. Any solution of the problem which left the Supreme Court free to interpret the constitution as it liked, whether the people approved of the interpretation or not, was undemocratic. There was indeed but one democratic solution: amend the constitution so as to provide for the removal of judges by the President on address of both Houses of Congress.* Such an amendment would put the government in all

*Jefferson wanted the constitution amended so as to provide for such removal, or that the judges should hold office for a limited term of years. See his writings *passim*.

three departments under the direct control of the people, and that was what democracy demanded.

Jefferson's real attitude towards the judiciary.

Although not a hint of this appeared in his message, his private correspondence shows that he felt a real danger in allowing the Supreme Court as then constituted to exist. At the very time that he was asking Congress to consider whether the judiciary system was not unnecessarily expensive, he was writing to his friends about its hostility to Republicanism. "They [the Federalists] have retired into the judiciary as into a stronghold," he wrote to John Dickinson in December, 1801. "There the remains of Federalism are to be preserved, and fed from the treasury, and from that battery all the works of Republicanism are to be beaten down and erased."* Eighteen years later, he declared that this prediction was being fulfilled. "The nation declared its will" (in 1800), he wrote to Judge Roane in 1819, "by dismissing functionaries of one principle and electing those of another, in the two branches, executive and legislative, submitted to their election. That, therefore, has continued the reprobated system, and although new matter has been occasionally incorporated into the old, yet the leaven of the old mass seems to assimilate to itself the new, . . . and we find the judiciary, on every occasion, still driving us into consolidation."† But he neglected to say that when he ruled his party with an absoluteness never

* Works (Washington's Edition), X., 424.

† Ibid., VII., 133.

surpassed by any President of the United States except Andrew Jackson, no word of recommendation escaped his lips to change the constitution so as to make it possible to give expression in all departments of the government to the "revolution of 1800."

In speaking of the portion of the judiciary system recently erected, he referred to a law passed by the Federalists in 1801 (February 13). Before its passage the judiciary system consisted of one Supreme Court with six judges, and of fifteen District Courts, each having a single judge. The United States was divided into three circuits. The judges of the Supreme Court held two terms a year at Washington, and twice a year made the tour of their circuits. The law of 1801 provided for one Supreme Court of five judges, when the first vacancy should occur; six Circuit Courts, each having three judges, excepting one circuit, which was to have but one; and twenty-three District Courts, each with a single judge as before. The increased expense caused by the new law amounted to about thirty thousand dollars a year. To save this expense was the point to which Jefferson called attention as the reason for repealing the law.

Judiciary Act of 1801.

The followers of Jefferson showed the same reticence in the debate on the repeal of the Judiciary Act. With the exception of such statements as that the Judiciary Act "tended to produce a gradual demolition of the state courts" (made by

The debate on the repeal of the Judiciary Act.

Giles), and the assertion by John Randolph that it arrogated to Congress "the right of evading all the prohibitions of the constitution and holding the nation at bay," Republican speakers did not even hint at the political purposes of the repeal.

The Federalists perceive the dilemma of their opponents.

The Federalists appreciated the dilemma of the Republicans. They believed that a disclosure by the Republicans of the ultimate designs of Jefferson would lead to the complete overthrow of his party. To this end the Federalists availed themselves of every allusion in the speeches of their opponents to drag into the light what they conceived to be the intentions of their opponents. In the course of the debate (February 9, 1802), Bayard asked why Giles had said that the government seized the first moment which presented itself to create a dependent moneyed interest. "Did he mean to denounce the funding system as one of the Federal victims marked for destruction? . . . Why has the present subject been combined with the army, the navy, the internal taxes, and the Sedition Law? Was it to involve them in one common odium, and consign them to one common fate? Are gentlemen aware of the extent to which it is designed to lead them? They are now called on to reduce the army, to diminish the navy, to abolish the mint, to destroy the independence of the judiciary, and will they be able to stop when they are next required to blot out the public debt, that hateful

Bayard's speech.

source of moneyed interest and aristocratic influence? Be assured we see but a small part of the system which has been formed. . . . If they can carry the people with them, their career will not be arrested while a trace remains of what was done by former administrations. . . . If you pass the bill upon your table, the judges have a constitutional right to declare it void. I hope they will have the courage to exercise that right. . . . The constitution may have its enemies, but I know that it has also its friends. . . . Will gentlemen risk civil dissension, will they hazard the welfare, will they jeopardize the peace of the country to save a paltry sum of money—less than thirty thousand dollars?" *

This speech voiced the fears of many Federalists. They feared that the Republicans intended, piece by piece, to destroy the work of the three preceding administrations,—funding system, army, navy, judiciary system, and practically the constitution.

But a large part of Jefferson's following, especially in the north, was as decidedly opposed to this as were the Federalists. Conservative men all over the country whom the aristocratic character of Federalism, its fear of anarchy, its readiness to raise armies, impose heavy taxes, and pass Alien and Sedition laws, had driven from its ranks, were attached to the existing system. They had voted for Jefferson because they were opposed to Federalist taxes, because

Conservatism.

* Annals of Congress, 1801–2, 603, 650.

they disliked the Federalist spirit, but not because they disapproved of the system of government which the Federalists had created. If they had believed that the alternatives were the Federalist system and some new untried system, they would have taken sides with the Federalists. But they held the balance of power, and in order to keep them in the ranks of the Republicans it was necessary to keep in the background the principles of the so-called revolution of 1800.

In the light of these considerations, the action of Congress with reference to the navy is significant.

Leib's motion to abolish the navy.

Michael Leib, a Pennsylvania Republican, moved that a committee be appointed to consider the question of abolishing the navy. When, on motion of the Federalist Roger Griswold, the question came before the House for discussion, Leib withdrew his motion.

The significance of this action was not lost on the Federalists. "The President's party in Congress," Bayard wrote to Hamilton, "is much weaker than you would be led to judge from the printed state of the votes. Here we plainly discern that there is no confidence; nor the smallest attachment prevails among them. The spirit which existed at the beginning of the session is entirely dissipated; a more rapid and more radical change could not have been anticipated. An occasion is only wanting for Virginia to find herself abandoned by all her

Bayard's letter to Hamilton.

auxiliaries, *and she would be abandoned upon the ground of her inimical principles to an efficient federal government.*" *

We can best appreciate the reason for Jefferson's silence by asking what Hamilton would have done if he had held Jefferson's opinions and occupied Jefferson's position. He would have employed all his resources to force his opinions on the country,—and he would have been defeated at the close of his first term. Whatever may be said of the comparative correctness of their opinions, there can be no doubt as to their comparative ability as politicians. The trait of character which Hamilton showed in urging the assumption of state debts—a determination to risk everything rather than abandon any part of his scheme—was thoroughly Hamiltonian, but it was utterly unlike Jefferson. Believing with intense conviction that the one hope of the world lay in the ultimate triumph of democracy, Jefferson nevertheless understood that the attempt of its friends to force their opinions upon the country faster than the people were ready to adopt them would result in the certain defeat of democracy. He knew that his enemies thought him a doctrinaire, ready to go to any lengths in carrying out his ideas. To have urged all his opinions upon his party would have been to play directly into the hands of the Federalists.

Explanation of Jefferson's course.

* Hamilton's Works (Hamilton's Edition), VI., 544.

While himself both a Democrat and a states' rights Republican, he knew that many of his followers were Democrats without being Republicans. Many of his followers who agreed with him in desiring to abolish all property qualifications for voting, and in opposing all aristocratic ceremonies, did not agree with him in regarding banking systems and national debts as tending towards monarchy, or in thinking that the general government was the foreign branch of our governmental system. They were opposed to the Federalists because the Federalists were aristocratic and conservative; they were followers of Jefferson because he was democratic and progressive, not because they were in sympathy with his peculiar theories of government.

Jefferson understood this. That is why he made no recommendation to have the constitution amended so as to change the character of the Supreme Court, and why he was silent as to many other matters about which he was equally positive. He deemed it better to succeed with the most important part of his programme than to fail altogether. To keep the government in the hands of a party which would seek to serve the people by giving effect to their wishes; to prevent it from falling into the hands of a party which believed in the European notion of the government of the many by the few—that seemed to Jefferson the thing imperatively necessary. Utterly to crush and annihilate this party was the first thing to be done. This accomplished, the constitution

could gradually be brought into harmony with the ideas of democracy.

Hamilton had predicted Jefferson's course. In the letter to Bayard in 1801 already cited, he had said: "Nor is it true that Jefferson is zealot enough to do anything in pursuance of his principles which will contravene his interest or his popularity. He is as likely as any man I know to temporize, to calculate what will be likely to promote his own reputation and advantage; and the probable result of such a temper is the preservation of systems, though originally opposed, which, being once established, could not be overturned without danger to the man who did it."

Hamilton's estimate of Jefferson.

This ought not to be accepted as a true estimate of Jefferson. It is not true that he sacrificed his principles for the sake of popularity. If it were, why was it that he in forced his embargo policy so vigorously, as we shall see, as seriously to diminish his popularity? While it is true that popularity was very dear to him for its own sake, it is also true that he valued it for the sake of his principles. How to strike off the fetters that had bound men so long intellectually and politically, how to throw open the doors that guard the treasures of art and science to man as man without regard to birth or social position, seemed to Jefferson the noblest object of human endeavor. He had just led democracy to a great victory. To make that victory decisive, to make hope-

less and impossible a successful attack of the stronghold of democracy, seemed to his sanguine temperament a long stride towards the realization of the noblest ideals for humanity.

This, then, was the dilemma of the Republicans: they must either compromise with their principles or be defeated. That is why the revolution of 1800 was so little of a revolution after all.

In the department of finance a thorough-going attempt was made to give expression to that revolution. It could be done with perfect safety there!

Gallatin's political aim.

Like Hamilton, Gallatin wished to manage the finances of the country so as to accomplish political as well as financial objects. Hamilton's political aim had been to bind by pecuniary interests the rich and influential all over the country to the support of the government; the political aim of Gallatin was to free the limbs of the young republic from every weight that tended to prevent it from developing into the symmetry and proportions of an ideal state. Hamilton thought the only way men could be induced to serve the state was by making it their pecuniary interest to do so: Gallatin, that one of the chief dangers of the government lay in warping men's natural desires to serve the state unselfishly by appeals to their pecuniary interests.

Gallatin's financial policy was based on two principles: first, that a national debt, besides being a burden

on the people, is a source of corruption, substituting, in many cases, appeals to men's pecuniary interests for appeals to their enlightened public spirit; secondly, that a repeal of all internal taxes is desirable in order to avert the danger of increasing taxes, an encroaching government, temptations to offensive wars, to say nothing of the self-evident maxim that it is always desirable to repeal taxes when it can be done without prejudice to more important interests. In a letter to Jefferson, November 16, 1801, Gallatin said: "I am firmly of the opinion that, if the present Administration and Congress do not take the most effective measures for that object [paying the public debt], the debt will be entailed on us and the ensuing generations, together with all the systems which support it and which it supports. On the other hand, if this Administration shall not reduce taxes, they never will be permanently reduced. . . . I agree most fully with you that pretended tax preparations, treasury preparations, and army preparations against contingent wars tend only to encourage wars." *

Two principles upon which Gallatin's financial policy was based.

To attain both these objects, to pay the national debt in as short a time as possible and at the same time repeal the internal taxes, it was necessary to reduce the expenses of the government to the lowest possible limit. But there were only two departments, the army and the navy, in which a material reduction of expenses was

* Writings of Albert Gallatin, I., 70, 71.

possible. In Gallatin's language, "Savings in every department may be practicable; but we can save but thousands in the other, and we may save hundreds of thousands in those two departments."

In a report submitted to the Senate December 18, 1801, Gallatin estimated the receipts from customs at $9,500,000, from lands and postage at $500,000, and from internal taxes at $600,000, making a total of $10,600,000; the expenditures for the navy at $1,100,000, for the army at $1,420,000, all civil expenditures at $980,000— which left $7,100,000 to be devoted yearly to the payment of the public debt. He thought that the latter sum might be increased by $200,000, since the estimates of expenses were made before the re-establishment of peace in Europe, and this would permit a considerable reduction in every item which depended on the "price of provisions, freight, transportation and even wages." He did not recommend a repeal of the internal taxes, because, important as he deemed it, he thought the rapid payment of the public debt even more important.

Gallatin's recommendation as to the payment of the public debt.

The repeal of these taxes was recommended by John Randolph, Chairman of the Committee of Ways and Means, who had been promised by the Secretaries of War and the Navy to reduce the expenses in their respective departments $600,000 below the estimated amounts. On April 2, a law was passed providing for their repeal, and,

Repeal of internal taxes; provision for payment of public debt.

April 24, the President signed a bill providing for an annual appropriation of $7,300,000 towards the payment of the public debt. The expected economies were in fact never made. The average annual expenses, civil, military, and naval, for the ten years beginning with January, 1802, and ending with December, 1811, were about $5,400,000.* This, however, was for the most part offset by the fact that the receipts from duties were greatly in excess of Gallatin's estimates.

When Congress thus gave legal form to Gallatin's ideas, it became clear that a part of Jefferson's theory of government was to be put in practice— the theory to wit, that the general government was the foreign branch of our governmental system, its only domestic functions consisting in the promotion of agriculture and commerce, and the diffusion of information; and that its management of "foreign concerns" should proceed on the assumption that the nations most likely to insult us could be compelled to respect our rights by commercial restrictions. Evidently a government whose entire domestic expenses were estimated at $980,000, including the cost of the collection and disbursement of the revenues, could scarcely be said to attempt the discharge of any domestic functions. And a government whose army and navy were to be supported by $1,900,000 a year—the sum finally agreed on—could not expect to cause its rights to be respected by force.

Significance of this legislation.

* Adams' Gallatin, 293.

Before the first half-year of Jefferson's administration had expired he found himself obliged to use the much-decried little navy created by the Federalists in defending the commerce of the country against a power upon whom peaceable coercion could not be brought to bear. Following the custom of Europe, the United States had paid in the preceding ten years more than two million dollars in the form of what amounted to tribute to the four pirate states, Morocco, Algiers, Tunis, and Tripoli. About two months and a half after Jefferson's inauguration, the Pacha of Tripoli demanded more than he had agreed to accept in a treaty negotiated in 1796, and when his demand was refused he declared war. Jefferson did not fail to improve the opportunity to emphasize his strict-construction theories. He sent a small squadron of frigates to the Mediterranean with orders to protect American commerce, but not to go beyond the line of defence, since Congress alone could declare war. A fight between an American frigate and a Tripolitan cruiser furnishes a somewhat curious illustration of the difference between "defending American commerce" and waging war. The American captured her enemy, killed twenty of her men and wounded thirty more. But after completely dismantling the captured vessel, cutting away her masts, and throwing her guns overboard, the prize was let go with the survivors of her crew, as Congress had not declared war!*

War with Tripoli.

* Writings of Thomas Jefferson (Ford), VIII., 118.

A less confident man than Jefferson would have asked himself whether other nations than the Barbary pirates, upon whom his theory of foreign concerns could not be brought to bear, might not insult the United States, and whether in any case it could be relied on with perfect certainty. For this theory of foreign "concerns" was the keystone of the arch of Jeffersonian Republicanism. If that failed, armies, navies, internal taxes, banking systems, liberal constructions of the constitution,—the whole troop of Federalist heresies and corruptions which the Republicans had never tired of denouncing, would be the inevitable result,—unless, indeed, the American people could be induced to act on Gallatin's opinion, that submission to insults, no matter how outrageous, was preferable to war. If this theory could not stand the test of trial, the foundation principle of Gallatin's financial system—that, the national debt being a pillar of corruption, the expenses of the government must be so arranged as to permit its speedy payment—was gone, and the denunciations which Republicans had poured upon Hamilton because a national debt had not seemed to him the worst of national calamities would be proved to have had no grounds. In truth, the issue between Hamilton and Gallatin, Federalism and Jeffersonian Republicanism, in one of its phases might have been narrowed down to this: Might not a nation as well as an individual have to choose debt as the least of all possible evils? Had the world

advanced so far towards the millennium that a nation could work out its political salvation—devote itself in the most intelligent way to the advancement of the highest interests of its citizens—without going in debt? The history of the next two administrations will furnish the answer to this question.

CHAPTER XXV.

THE PURCHASE OF LOUISIANA.

THE conduct of the Spanish government in relation to the United States during the Revolutionary War was little less than extraordinary. It seemed to think that it could depress England without elevating the United States. Although it declared war against England in 1779, it refused to receive a minister from the United States until February, 1783,—three months after the provisional articles of the treaty of peace had been signed.

Spain's attitude towards the United States during the Revolutionary War.

It was the demand of the United States for the free navigation of the Mississippi that made the difficulty. Our minister to Spain, John Jay, was instructed to propose to the Spanish government, on behalf of the United States, to guarantee to Spain the two Floridas on condition of receiving the grant of the free navigation of the Mississippi. Spain would not consent to it. "The Count [Florida Banca, Spanish Secretary of State] said this morning with warmth," Jay wrote, September 23, 1780, "that unless Spain could exclude all nations from the Gulf of Mexico they might as well admit all."

Explanation of the conduct of Spain.

In 1785, another attempt to secure the right to navigate the Mississippi was made. The Spanish *charge*

d'affaires, Gardoqui, was willing enough to make a commercial treaty, provided the United States would give up all claim to navigate the Mississippi. After a year of unavailing arguments, Jay advised Congress to make a treaty on Gardoqui's terms. Congress decided to follow Jay's advice, and this made the people of Kentucky very indignant. Separated from the Atlantic by the Allegheny Mountains, the right to navigate the Mississippi was essential to their prosperity. Franklin's metaphor, that the mouth of the Mississippi was the front door of the West, did but represent the truth. When the people of Kentucky heard of the treaty which proposed to shut them out from their own front door for twenty-five years, they threatened to secede and ask the protection of Great Britain. Their threats and remonstrances prevented the ratification of the treaty, and the question was left unsettled. In 1793, another unsuccessful attempt to secure the free navigation of the Mississippi was made. Genet was only prevented from sending an army of Kentuckians to capture New Orleans by the actual presence of United States troops. Sympathy with France and gratitude to the French people had very little to do with the readiness of Kentuckians to engage in this enterprise. They were determined to secure the right to the free navigation of the Mississippi. The perception of this probably had something to do with the treaty negotiated with Spain in 1795. As Spain was on the point of going to war with England, the Spanish government

doubtless thought it unwise to drive the United States into alliance with its enemy.

In 1800, the territory of Louisiana, which had been ceded by France to Spain in 1762, was by a secret treaty retroceded to France. When, early in 1802, the news of the retrocession arrived (Rufus King, our minister to England, sent Madison a copy November 20, 1801*), the immense significance of the fact was not lost upon the American government. If it had been difficult to secure the right to navigate the Mississippi from Spain, how much more difficult would it be to obtain it from France, the most powerful nation in the world? On April 18, 1802, Jefferson wrote to Robert Livingston, our minister in France, as follows: "The cession of Louisiana and the Floridas by Spain to France works most sorely on the United States. It completely reverses all the political relations of the United States, and will form a new epoch in our political course. . . . There is on the globe one single spot the possessor of which is our natural and habitual enemy. It is New Orleans, through which the produce of three eighths of our territory must pass to market. . . . France, placing herself in that door, assumes to us the attitude of defiance. Spain might have retained it quietly for years. . . . The day that France takes possession of New Orleans . . . seals the union of two nations who in conjunction can maintain exclusive pos-

Retrocession of Louisiana.

* State Papers, II., 511.

session of the ocean. From that moment we must marry ourselves to the British fleet and nation."*

The excitement caused by the retrocession increased when the news came that the Spanish governor at New Orleans, Morales, had withdrawn the right of navigation given by the treaty of 1795. A Federalist senator from Pennsylvania, James Ross, introduced resolutions (February 15, 1803) authorizing the President to call out 50,000 militia and take possession of New Orleans. These resolutions were not carried. But an appropriation of $2,000,000 was made for the purchase of New Orleans and the Floridas,† and, in January, 1803, Monroe was sent as minister to France to co-operate with Livingston in effecting the purchase.

Purchase of Louisiana.

For some inscrutable reason, Napoleon, who was then First Consul of France, was ready to sell to the United States not only New Orleans, but the whole of the vast province of Louisiana. Before Monroe reached France, one of Napoleon's ministers offered to sell it to Livingston. On April 30, 1803, a few days after the arrival of Monroe, Livingston and Monroe, on behalf of the United States, and Barbé Marbois, on behalf of France, signed a treaty by which France ceded the territory to the United States, in consideration of the sum of $15,000,000, of which one fourth—$3,750,000—was to be an offset to claims which American citizens had against France.

*Jefferson's Works (Washington's Edition), IV., 431, 432.
†Annals of Congress, 1802–1803, 95, 96.

As soon as Jefferson read the treaty, he thought of his strict-construction theories. If, as he maintained, the general government was but the foreign branch of our governmental system, the treaty was unconstitutional. He therefore at once drew up an amendment and submitted it to the cabinet. He explained his ideas in a letter to one of the senators from Kentucky, John Breckenridge (who had introduced his resolutions into the legislature of Kentucky in 1798): "They [Congress] I presume will see their duty to the country in ratifying [the treaty] and paying for it so as to secure a good which would otherwise probably never again be in their power. But I suppose they must then appeal to the nation for an additional article to the constitution, approving and confirming an act which the nation had not previously authorized. The constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The executive, in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the constitution. The legislature, in casting behind them metaphysical subtleties [!] and risking themselves like faithful servants, must ratify and pay for it, and throw themselves on their country for doing for them unauthorized what we know they would have done for themselves had they been in a situation to do it. It is the case of a guardian investing the money of his ward in purchasing an important adjacent

Constitutional difficulties.

territory and saying to him when of age, 'I did this for your good; I pretend to no right to bind you; you may disavow me, and I must get out of the scrape as I can; I thought it my duty to risk myself for you.' But we shall not be disavowed by the nation, and their act of indemnity will confirm and not weaken the constitution, by more strongly marking out its lines." *

Although the cabinet disapproved of Jefferson's idea, he was unwilling to abandon it. Profoundly convinced that Hamilton's construction of the constitution was monarchical in its tendencies, and realizing that without an amendment to the constitution the Louisiana treaty could be defended only by the reasoning of Hamilton, he persisted. Besides the letter to Breckenridge, written August 12, he wrote another to Paine, August 25. He drew up a new amendment which he sent to the members of the cabinet. He explained his views, in a long conversation, to Wilson Cary Nicholas, then a senator of the United States, who had vigorously supported the Virginia resolutions of 1798. But Nicholas believed that the theory was constitutional, and so wrote Jefferson. In Jefferson's reply (September 7, 1803), he spoke his last words on the subject. "I am aware," he said, "of the force of the observations you make on the power given by the constitution to Congress to admit new states into the Union without restraining the subject to the territory then constituting

* Jefferson's Works (Washington's Edition), IV., 498.

the United States. But when I consider that the limits of the United States are precisely fixed by the treaty of 1783, that the constitution expressly declares itself to be made for the United States, . . . I do not believe it was meant that [Congress] might receive England, Ireland, Holland, etc., into it, which would be the case on your construction. . . . I had rather ask an enlargement of power from the *nation*, when it is found necessary, than to assume it by a construction which would make our powers boundless. Our peculiar security is in the possession of a written constitution. Let us not make it a blank paper by construction. I say the same as to the opinion of those who consider the grant of the treaty-making power boundless. If it is, then we have no constitution." But after so clearly stating that the annexation of Louisiana without express authority from the people made blank paper of the constitution, he said: "If, however, our friends shall think differently, certainly I shall acquiesce with satisfaction, confiding that the good sense of our country will correct the evil of construction when it shall produce ill effects." *

The last sentence was very characteristic of its many-sided author. It was impossible for Jefferson to attempt to force a policy upon an unwilling party. The part he hoped to play in history he could act only with a great party behind him. And so the man who in 1792

* Jefferson's Works (Washington's Edition), IV., 505.

insisted so strenuously on "lacing up" the powers of the government strictly within the "enumerated powers," and who in 1798 protested so vigorously against a construction which swept away all "ramparts against the passions of a majority in Congress," in 1803, two years after the great revolution which had turned the monarchists out of office, "acquiesced with satisfaction" in an interpretation of the constitution which he himself declared made "blank paper" of it.

The first session of the Eighth Congress opened October 7, 1803. On October 22, John Randolph offered a resolution declaring that provision ought to be made to carry the treaty into effect. Three days later, the House took up Randolph's resolution for debate.

Debate on the Louisiana treaty; Griswold's speech.

The Federalists contended that the treaty was unconstitutional, first, on the ground that it provided for the incorporation of the inhabitants of the ceded territory into the Union with all of the privileges of citizens of the United States. The Federalist Roger Griswold admitted that "new territory and new subjects" might be obtained by "conquest and purchase; but neither the conquest nor the purchase could incorporate them into the Union. They must remain in the condition of colonies, and be governed accordingly. . . . The union of the states was formed on the principles of a copartnership, and it would be absurd to suppose that the agents of the parties who have been appointed to execute the

business of the compact, in behalf of the principals, could admit a new partner without the consent of the parties themselves." *

The replies of the Republicans showed how desperate were the straits to which they were reduced by the situation. Joseph Nicholson of Maryland, one of the ablest men on the Republican side, refused to meet the question raised by Griswold. Nicholson's reply. "Whether the United States, as a sovereign and independent empire, had a right to acquire territory was one question, but whether they could admit that territory into the Union, upon an equal footing with the other states, was a question of a very different nature. Upon this latter point I mean to offer no opinion, because I do not consider it before the House." † Why was it not before the House? The treaty provided that the inhabitants of the ceded territory should be admitted "as soon as possible to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." Did this mean, as the Federalists contended, that the inhabitants of the Louisiana territory were to be admitted into the Union as citizens as soon as possible? If it did, the question raised by Griswold was before the House, and to say that it was not was equivalent to admitting that his argument was unanswerable. If it did not, the only way to meet the issue fairly was to show that it did not—to show that the treaty did not bind

* Annals of Congress, 1803–1804, 461.
† Ibid., 467.

the government to do what the Federalists declared to be unconstitutional.

Indeed, in view of Nicholson's frank avowals, it seems a little strange that he hesitated to take the position required by the emergency—to say that the American government had a right to do anything which would promote the good of the nation. "If I had been asked anywhere but in this House," said Nicholson, "whether a sovereign nation had a right to acquire new territory, I should have thought the question an absurd one. It appears to me too plain and undeniable to admit of demonstration." * Unquestionably. But it ought to have been equally plain and undeniable to a disciple of Jefferson that what the American *nation* could do was one thing, what the American *government* could do was quite another. The American nation had all the power that any sovereign nation possesses; the American government had only the power which had been delegated to it by the constitution. A man who confused this distinction was surely "straining at a gnat" when he hesitated to declare that the American government could do whatever, in its judgment, was required by the interests of the American people.

Rodney's speech.

Another Republican leader, Cæsar A. Rodney of Delaware, boldly took the position required by the emergency. He based the right to acquire the territory on the "general welfare" clause. "I cannot perceive why within . . . the capa-

* Annals of Congress, 1803-4, 467.

cious grasp . . . of this general provision [there] is not included the power of increasing our territory, if necessary for the general welfare or common defence."* Inconsistency could go no further. In truth the Republicans were confronted with a cruel dilemma. Either Rodney was right or the treaty was unconstitutional. But if Rodney was right, the Republicans had been wrong throughout the whole of their preceding history.

The second ground upon which the Federalists urged that the treaty was unconstitutional was its provision that the ships of France and Spain should be admitted for twelve years into the ports of the ceded territory without paying higher duties than the ships of the United States,—this in opposition to the clauses of the constitution which declare that no preference shall be given to the ports of one state over those of another, and that all duties, excises, and imposts shall be uniform throughout the United States. In reply to this, Nicholson said, in substance, that the territories of the United States were no part of the United States; that they were possessions of the United States and only became integral parts of it when they were admitted into the Union as states. The territories of the country were in the nature of colonies and might be governed by the American government as it saw fit, without regard to the restrictions of the constitution. "Louis-

Nicholson maintains that the territories are not integral parts of the United States.

*Annals of Congress, 1803–4, 471.

iana," said he, "is a territory purchased by the United States in their confederate capacity, and may be disposed of by them at pleasure. It is in the nature of a colony whose commerce may be regulated without any reference to the constitution. . . . The restrictions in the constitution are to be strictly construed, and I doubt whether under a strict constriction the very same indulgence might not be granted to the port of Natchez, which does not lie in any state, but in the territory of the United States." * In other words, the prohibitions of the constitution did not apply to the territories; in the territories, Congress might establish a religion, might deprive the people of the right of freedom of speech, might inflict cruel and unusual punishments,—might do anything which the most despotic government in the world can do!

Congress votes to carry the treaty into effect.

The resolution to carry the treaty into effect passed the House by a vote of ninety to twenty-five, and the Senate by a vote of twenty-six to five. The first of the two questions which Republicanism had to answer before it could prove itself a practical system of government then received its reply; the government could not confine itself within the narrow limits marked out for it by Republicanism without sacrificing the interests of the people.

On October 22, a bill was introduced in the Senate by Breckenridge which provided for taking possession

* Annals of Congress, 1803–4, 471.

of the territory and for its temporary government. It gave to the President of the United States the same power over the territory which had been exercised by the king of Spain until Congress should decide upon a territorial form of government. In reply to the objection of the Federalists that the constitution made no provision for transforming the President into a Spanish despot, but two things could be said, and the Republicans said both of them. John Randolph said: "Gentlemen will see the necessity of the United States taking possession of the country in the capacity of sovereign to the same extent as that of the existing government of the province."* And Rodney made the only other possible reply when he maintained that there was no constitution so far as the territories were concerned. In the authority to "make all needful rules and regulations respecting the territory of the United States" Rodney found "full and complete power to exercise a sound discretion generally on the subject": the government of the United States had despotic power over the territories. On October 31, Jefferson signed the bill which put him in possession of absolute power over the people of Louisiana.

The bill authorizing the President to take possession of the territory.

Randolph's speech.

Rodney's speech.

* Annals of Congress, 1803–1804, 500.

This law provided for the government of Louisiana until Congress found time to determine upon a territorial form of government. On December 30, a bill was introduced dividing the Louisiana territory into two parts, the part north of the thirty-third parallel of north latitude to be called the district of Louisiana, and the part south of it the territory of Orleans. It extended the authority of the governor and judges of the Indiana territory over the district of Louisiana, with power to make all laws which they might "deem conducive to the good of the inhabitants." It vested the executive power of the territory of Orleans in a governor, to be appointed by the President, and the legislative power in the governor and a council of thirteen—to be convened and prorogued by the governor whenever he saw fit,—also to be appointed by the President from among those holding real estate in the territory.

Bill for the permanent government of the Louisiana territory.

The debate upon this bill in the Senate was not reported. We can form some notion of the drift of it from the action which was taken upon a resolution offered by the Federalist John Quincy Adams, one of the senators from Massachusetts, declaring that the people of the United States had never delegated to Congress the power to pass a law which would make it possible for the people of Louisiana to be taxed without their consent. The resolution received but four votes.

John Quincy Adams' resolution.

When the bill came before the House many Republicans earnestly opposed it. Michael Leib, a Pennsylvania Republican, characterized the power conferred by it on the governor as "royal"; the Speaker himself, Nathaniel Macon of North Carolina, declared that it established a species of government unknown to the laws of the United States; Campbell of Tennessee said that it established a complete despotism, that it did not evince a single trait of liberty; Sloan asked: "Can anything be more repugnant to the principles of just government, can anything be more despotic, than for the President to appoint a governor and legislative council, the governor having a negative on all their acts, and power to prorogue them at pleasure?"

Debate on the bill in the House.

But the situation held the Republicans as in a vise, and some of them who were clear-headed enough to see it were frank enough to avow it. Lucas admitted that the bill established elementary principles of government never before introduced into the government of any territory of the United States. But "governments must not rest on theory, but must raise their political structure on the state of the people for whom they are made." He reminded the House that it was too late to contend for abstract right; that the people of Louisiana had not been consulted when they were transferred to this country; that many of them had shed tears when they saw the French flag hauled down and the American

raised in its place. Eustis said: To attempt to extend the provisions of American institutions to the people of Louisiana is a "vain theory; . . . I am one of those who believe that the principles of civil liberty cannot suddenly be ingrafted on a people of a directly opposite hue. The approach of such a people to liberty must be gradual."* Facts, he said, must decide the question; otherwise liberal and praiseworthy sentiments might operate injuriously on those whom they were intended to benefit.

The Republican Congress and the Republican President were men of too much common sense to be consistent, i.e., to attempt to maintain the tenableness of their theories, and so in March, 1804, the bill became a law. Consciously or unconsciously, Eustis characterized with great accuracy the theories of Jeffersonian Republicanism. They were indeed "liberal and praiseworthy sentiments" of the most exalted character. They had been formulated by men who believed with intense enthusiasm that to put them in practice would introduce a new era into the history of the world.

But three short years of Republican rule had shown them to be utterly impracticable. The government had been obliged to choose between adhering to them and sacrificing the interests of the people, and disregarding them for the sake of the people. Fortunately for the country, the men

Impracticability of Republican theories.

*Annals of Congress, 1803–1804, 1294, 1296.

at the head of the government were not doctrinaires. They saved the American people from a row of custom-houses stretching up and down the Mississippi, from a huge standing army,—from a repetition on this side of the Atlantic of the experience of Europe, although, in order to do it, they were obliged, from their own point of view, to make blank paper of the constitution. And when the territory was acquired, the theories which had seemed so sacred to the Republicans, which they had permitted no one to doubt without classing him among the enemies of the human race, were still found to be hopelessly unsuited to the rough angularities of the situation. The Republican theory declared that all just government derives its authority from the consent of the governed. But a government needs to be intelligent as well as just, and the Republicans knew that an ignorant people, wholly without experience in politics, could not in a moment give themselves an intelligent government. The theories of the Republicans were excellent for a world that requires no government. But as guides to action in the practical affairs of this world, the experience in connection with Louisiana had proved them to be absolute and total failures. However useful they had been as weapons in fighting the battles of the opposition in the days of Federalist domination, they were as useless in winning the victories of constructive statesmanship as would be the bow and arrows of the Indians in confronting the Mauser rifle. Republicans with anti-

quarian tastes might preserve, if they pleased, the speeches in which they had set forth these theories: as a soldier, remembering the tastes of his youth, might decorate his quarters with the weapons of more primitive times. But to the tried veteran who could interpret it aright, the experience in connection with Louisiana nevertheless proved that Republican theories, at least as far as they related to domestic matters, could serve no further useful purpose. Their bearing on "foreign concerns" was still to be tested.

CHAPTER XXVI.

THE NORTHERN CONFEDERACY.

WHEN Jefferson became President, there were a few Republicans who held office under the federal government. Ædanus Burke, writing July 24, 1801, to Madison of Edward Weyman, surveyor of the port of Charleston, said: "Among the Republicans in and around this city there is a lively apprehension that through some mistake or other he may be removed from office. . . . During the Reign of Terror in 1798 and '99, which struck into the minds of men such a dread and panic in this city, there were not ten men to whom I dared speak my mind; there were not, I declare before God, there were not a half dozen men; yet Weyman never quitted the ground, and I expected every week nothing less than his removal. . . . I have been a prisoner of war in the hands of the British for six months; and provided I had a good guarantee of an exchange, I would as lieve go to the devil for sixteen months more as be with the British again; and yet it was not so excruciating to one's feelings as the despotic insolence with which one part of our fellow citizens hunted down those who differed from them in that day." *

Letter of Ædanus Burke to Madison.

* American Historical Review, 1898, 280.

But nearly all the offices were in the hands of the Federalists. Between Jefferson's desire to win over the rank and file of his antagonists and his desire to please his own party, he was in an embarrassing position. However, he started out, so he wrote to Monroe (March 7, 1801), with the determination to make no removals on the ground of political principles alone, since such removals would "revolt our new converts." Admitting that there must be some deprivations of office, he thought they "must be as few as possible, done gradually, and bottomed on some malversation or inherent disqualification." He acknowledged that it was not decided where "we shall draw the line between retaining all and none," and added characteristically, "perhaps we shall proceed *à talons*, balancing our measures according to the impression we perceive them to make."*

Jefferson's position as to Federalist office-holders.

He very soon marked one class of federal office-holders for removal. "All appointments to civil offices during pleasure," he wrote to Giles, "made after the event of the election was certainly known to Mr. A., are considered nullities. I do not view the persons appointed as even candidates for office, but make others without noticing or notifying them. Mr. A.'s best friends have agreed that this is right." †

Elizur Goodrich belonged to this class of office-holders. Only two weeks before the inauguration of

* Writings of Thomas Jefferson (Ford's Edition), VIII., 10.

† Ibid., 25. The letter was written March 23.

Jefferson, Adams had appointed Goodrich to be the collector of the port of New Haven. Jefferson wrote (March 29) to Gideon Granger and also to Pierrepont Edwards, asking if there was any reason for making an exception in Goodrich's case. Both of his correspondents were emphatically of the opinion that there was not. Granger wrote that a number of tried friends whom he had consulted agreed "that the cause requires the removal of Mr. Goodrich immediately, and of various other principal officers as soon and in such manner as the executive may deem proper." One of the reasons assigned was that the Federalists were maintaining that Jefferson himself had a contempt for the Democrats in Connecticut, as was proved by his not having appointed any of them to office. Edwards wrote that to keep Goodrich in office would strengthen the Federalists in their opposition. "They boldly assert that you dare not dismiss any federal officer in Connecticut. They say that you have no confidence in any of the Republicans because you consider them as unfriendly to all government. The malignity of the Federalists here is wholly inconceivable to any but such as are eye and ear witnesses to all. . . . Our leading Federalists are all royalist. . . . If they cannot effect a change in the Administration they are resolved to divide the Union. . . . It is determined, so far as Connecticut is concerned, to disgrace the Republican party as much as possible. . . . on all occa-

Letters of Gideon Granger and Pierrepont Edwards to Jefferson.

sions to teach it for doctrine that the Democrats in Connecticut are a set of men of no *talents*, no *property*, no *morals*, and *unfriendly to all government.* With these facts in view, we do not hesitate to say that a temporizing policy will be here a ruinous policy." *

Goodrich was removed and Samuel Bishop, a Republican whose son had made a speech in which he drew a parallel between Jefferson and Jesus Christ, was appointed in his place. A committee of New Haven Federalists at once sent a formal remonstrance to the President.

Jefferson's letter to the New Haven Federalists.

Jefferson made an elaborate reply. "When it is considered," he said, "that during the late Administration those who were not of a particular sect of politics were excluded from all office; when, by a steady pursuit of this measure, nearly the whole offices of the United States were monopolized by that sect; when the public sentiment at length declared itself and burst open the doors of honor and confidence to those whose opinions they more approved, was it to be imagined that this monopoly of office was still to be continued in the hands of the minority? Does it violate their rights to assert some rights in the majority also? Is it political intolerance to claim a proportionate share in the direction of public affairs?" Jefferson thought that it was not proper for Goodrich "to place himself in office without knowing whether

* Quoted by the Historical Review, January, 1898, 276–8.

those whose agent he was to be could have confidence in his agency. . . . If a due participation in offices is a matter of right, how are vacancies to be obtained? Those by death are few, by resignation none. Can any other mode than by removal be proposed?" *

Jefferson afterwards decided to proceed further "in the drudgery of removal" than he at first intended. On July, 1803, he wrote to Duane, editor of the "Aurora," that only one hundred and thirty offices subject to his appointment, out of a total of three hundred and sixteen, were held by Federalists.† Public sentiment evidently approved of his course, since his administration steadily grew in popularity.

Number of Jefferson's removals from office.

His administration had indeed been very popular from the beginning. His conservatism, his conciliatory methods, combined with the undoubted fact that he was in thorough sympathy with American ideas, caused the rank and file of his opponents to desert to him in a steady stream. In the spring of 1801, Rhode Island went Republican and all the other New England States showed Republican gains. Excepting Delaware, every state outside of New England was under the control of the Republicans, and even Delaware elected a Republican governor.

Popularity of his administration.

Gallatin's management of the finances contributed powerfully to the popularity of the Administration. In

* Works (Washington's Edition), VHI., 78.

† Writings of Thomas Jefferson (Ford's Edition), VIII., 258.

the report submitted to Congress at the close of 1802, it appeared that the revenue from customs during the financial year that had just closed amounted to $12,280,000, a much larger sum than had ever before been received in a single year from that source. When Louisiana was bought, Gallatin provided for the payment of the purchase-money without asking Congress to lay a cent of additional taxes. That sort of success appealed very effectively to the American people.

Gallatin's management of the finances.

In the Eighth Congress, out of a Senate of thirty-four members twenty-five were Republicans. This great strength led Jefferson to think that an attack on the federal judiciary might be ventured. On February 3, 1803, he sent a message to the House of Representatives, accompanied with letters and affidavits for the purpose of showing that Judge John Pickering of the District Court of New Hampshire, through habits of drunkenness and other causes, was unfit to perform the duties of his office. The message was an invitation to the House to impeach Pickering, and as such was accepted. Before the session closed, Joseph Nicholson and John Randolph were sent to the bar of the Senate to impeach Pickering of high crimes and misdemeanors.

Jefferson recommends the impeachment of Pickering.

When the day arrived (March 2, 1804) upon which Pickering had been summoned to appear before the Senate to answer to the charges of impeachment, his

name was called three times without answer. A petition was presented from his son, Jacob Pickering, by Vice-President Burr, alleging that at the time the acts charged against him were said to have been committed, as well as ever since, he was insane, and praying for a postponement of the trial in order that evidence might be collected to substantiate the fact.

Pickering's son declares that his father is insane.

Nearly the whole of the next day, the Senate sat with closed doors, deliberating on the question whether evidence to prove Pickering's insanity should be received. The constitution provides for removal from office, after impeachment, only "on conviction of treason, bribery, or other high crimes and misdemeanors." As the acts of an insane man cannot be regarded as crimes, persevering and determined opposition was made to receiving evidence to prove Pickering's insanity, because of the fear that if his insanity were proved he could not be convicted of high crimes and misdemeanors.* But the sense of justice of the majority was not so utterly debauched by party passion as to permit this opposition to succeed. By a vote of eighteen to twelve, it was decided that the evidence should be received.

The Senate finally decides to receive evidence of Pickering's insanity.

When the Senate had heard the evidence which proved Pickering's insanity, it was placed in a dilemma.

* Memoirs of John Quincy Adams, I., 299.

Dilemma of the Senate.

It had either to pronounce an insane man guilty of high crimes—a manifest violation of the principles both of law and of justice—or assume that the term "misdemeanors" in the constitution was not to be taken in a technical, legal sense, that it might mean nothing more than acts on the part of the officer impeached which showed that he was not a suitable man to fill his office; or permit to remain in office a man who was totally unfit to perform its duties. As the second horn of the dilemma was in perfect accord with the democratic theories of most of the Republicans in the Senate, there would seem to have been an excellent opportunity to establish the precedent that "misdemeanors" were not of necessity criminal offences. Here is a judge, the Republicans might have argued, who is manifestly incapable of performing the duties of his office. But the constitution makes no provision for removing him except on conviction of treason, bribery, or other high crimes and misdemeanors. Are we to suppose that the framers of the constitution overlooked the possibility of such instances as this? By the very nature of the case, we are compelled to assume that "misdemeanors," as applied to the proper performance of the duties of office, was meant to comprehend all disqualifications except bribery and treason.

But the extreme Democrats were afraid to take this ground. They were afraid that the conservative Republicans would refuse to follow them. They ac-

cordingly evaded the issue They decided, in opposition to the Federalists, to put the question, Is John Pickering, District Judge for the District of New Hampshire, *guilty* as charged in this article? and to have each senator answer "aye" or "no." Their purpose was to enable senators who did not believe that Pickering was guilty of any crimes or misdemeanors, but who did believe that he had actually done the things he was charged with doing, to vote "aye." By a vote of nineteen to seven Pickering was found guilty, and by a vote of twenty to six he was removed from office.

The Democrats dodge the question.

On May 2, 1803, three months after Jefferson advised the House of Representatives to impeach Pickering, Samuel Chase, a judge of the Supreme Court, made a charge to a grand jury at Baltimore in which he said: "The history of mankind, in ancient and modern times, informs us that a monarchy may be free, and that a republic may be tyranny. . . . Where law is uncertain, partial, or arbitrary, where justice is not impartially administered to all, where property is insecure, and the person is liable to insult and violence without redress by law, the people are *not free*, whatever may be their form of government. To this situation I greatly fear we are fast approaching. . . . The late alteration of the federal judiciary by the abolition of the office of the sixteen circuit judges, and the recent change in our state [Mary-

Chase's charge to a Baltimore jury.

land] constitution by the establishing of universal suffrage, and the further alteration that is contemplated in our state judiciary, if adopted, will, in my judgment, take away all security for property and personal liberty. The independence of the national judiciary is already shaken to its foundation, and the virtue of the people alone can restore it. . . . The change of the state constitution, by allowing universal suffrage, will, in my opinion, certainly and rapidly destroy all protection to property and all security to personal liberty; and our republican constitution will sink into a mobocracy, the worst of all possible governments. . . . The modern doctrines of our late reformers, that all men in a state of society are entitled to enjoy equal liberty and equal rights, have brought this mighty mischief upon us; and I fear it will rapidly progress until peace and order, freedom and property, shall be destroyed." *

This direct and forcible attack upon the principles of democracy arrested the attention of Jefferson. But instead of officially advising the impeachment of Chase, he wrote (May 13, 1803) a characteristic letter to Joseph Nicholson, one of the managers of Pickering's impeachment, in which he said: "You must have heard of the extraordinary charge of Chase to the grand jury at Baltimore. Ought this seditious attack on the principles of our constitution and on the proceedings of a state to go unpun-

Jefferson advises Nicholson to move Chase's impeachment.

* Annals of Congress, 1804–1805, 673, 676.

ished? And to whom so pointedly as yourself will the public look for the necessary measures? I ask these questions for your consideration; for myself, it is better that I should not interfere." *

If Jefferson had pointed out the law, or the clause in the constitution, which had been violated by this "seditious and official attack," Nicholson would doubtless have been perfectly ready to undertake Chase's impeachment. But, after mature deliberation, he decided not to follow the advice of Jefferson. John Randolph, however, with more courage than discretion, assumed the responsibility which Nicholson had declined. On Jauuary 5, 1804, the day after the managers appointed by the House carried to the Senate the articles of impeachment against Judge Pickering, Randolph moved the appointment of a committee to inquire into the official conduct of Samuel Chase. The committee was appointed, and on March 6 it made a report. On March 12, the very day the Senate voted Pickering guilty, the House took up the report and, in accordance with its recommendations, voted that Chase should be impeached.

Nicholson declines, but Randolph assumes the responsibility.

This attack upon the federal judiciary was too severe a strain upon the feeble loyalty of many of the extreme Federalists. They had seen "the cowardly wretch" at the head of the Republican party gradually and cautiously removing Federalists from office in order, as they be-

Leading New England Federalists resolve to organize a Northern Confederacy.

*Jefferson's Works (Washington's Edition), IV., 486.

lieved, to maintain himself in power and accomplish his "infidel and visionary schemes."* They had seen what they regarded as a violation of the constitution in order to annex a vast territory to the Union, and thereby perpetuate the rule of the South and West over New England. And when they saw the independence of the judiciary assailed, when they heard the doctrine avowed that the clause in the constitution granting to federal judges their offices during good behavior was intended only to protect them against executive removals—that it was not intended to restrain the two Houses of Congress upon whose representation the President ought to remove them,†—they felt that the only protection to be found from the long-expected "crisis" was in the organization of a Northern Confederacy.

Of the six Federalist senators from the New England states, three of them, Tracy and Hillhouse of Connecticut and Pickering of Massachusetts, were strongly in favor of the scheme. Plumer of New Hampshire was also in sympathy with it during the winter of 1803 and 1804, but, upon further reflection, he became opposed to it.

Their original plan.

A number of the representatives from the same section, notably Samuel Hunt of New Hampshire and Roger Griswold of Connecticut, were ardent advocates of a Northern Confederacy.‡ Their original plan seems to have been to have the legislatures

* New England Federalism, 351. † Ibid., 340. ‡ Ibid, 106.

of those states which were in favor of separation—Connecticut, New Hampshire, and Massachusetts—decline to elect senators to Congress and repeal the law authorizing the people to elect representatives to Congress.*

But the opposition of some of the extreme Federalists in New England—George Cabot, Fisher Ames, Theophilus Parsons, and Stephen Higginson—compelled them to abandon their plan. Though all four of these gentlemen were agreed as to the desperateness of the evils from which the country was suffering, they did not see any remedy for them in a Northern Confederacy. Said Cabot, voicing the sentiments of all four in a letter dated February 14, replying to one from Pickering which he had shown to his three friends: "I greatly fear that a separation would be no remedy, because the source of them [our evils] is in the political theories of our country and ourselves. . . . We are democratic altogether; and I hold democracy in its natural operation to be the government of the worst." Cabot thought that a separation might, "at some period not very remote, take place." But he could see no reason to expect any good results from it "while we retain maxims and principles which all experience and reason pronounce to be absurd. . . . At the same time that I do not desire a separation at this moment, I add that it is not practicable without the intervention of

Cabot opposes.

* New England Federalism, 145, 357.

some cause which should be very generally felt and distinctly understood as chargeable to the conduct of our Southern masters such, for example, as a war with Great Britain manifestly provoked by our rulers." *

Higginson wrote to Pickering a clearer statement of the reason why a separation was impracticable. It was, in substance, that the vast majority of the members of the Federalist party had not sense enough to know that they were suffering from terrible evils, and that the shadow of a great crisis was already athwart their path. "It is impossible to alarm, much less to convince, a large portion of the Federalist party here of their danger. A small part only of those called Federal . . . are sound in their opinions, and willing to look into their real situation. Many even of our own party have as much yet to unlearn as to learn. They have yet much of the democratic taint about them." †

The plotters change their plan.

In the face of this opposition, the advocates of a Northern Confederacy were compelled to change their plans. From the outset it had seemed to them desirable that New York should become a member of the Northern Union.‡ But the opposition of the leaders of their own faction in New England to their scheme made the adhesion of New York a necessity. How to gain it was the question. Their plans were quickly formed. They knew that Aaron Burr had never made any sort of pretence of

* Life and Letters of George Cabot, 341, 344.

† New England Federalism, 361. ‡ Ibid., 345.

devotion to the "principles" of Federalism; that the most eminent men in their own party had no confidence in him; that they themselves, as their conduct proved, regarded him as a political adventurer. But so desperate was their temper, so unbearable were the evils from which they imagined themselves to be suffering, that they were willing to accept the leadership of Aaron Burr if thereby they might escape from the hated thraldom of Virginia.

Burr was a candidate for governor of New York. The plan of the men who were plotting to overturn their government was to effect his election by the aid of Federalist votes. "As unpleasant," Griswold wrote March 11, 1804, "as the thing may be, . . . I have been induced to consider a union in the election of Colonel Burr as the only hope which at this time presents itself of rallying in defence of the Northern states." *

On April 4, 1804, directly after the adjournment of Congress, Griswold, by appointment with Burr, had an interview with the latter at his house in New York.

Griswold's interview with Burr.

Burr would only state that "he must go on democratically to obtain the government; that if he succeeded, he should administer it in a way that would be satisfactory to the Federalists." † The effect of the conversation was to induce Griswold to wish Burr success.

* New England Federalism, 355.

† Hamilton's History of the Republic, VII., 787.

But Hamilton was strongly opposed to Burr's election. He had no sympathy with the disunionist plots of the New England Federalists. He was opposed to disunion, not because, like Cabot, he thought the time had not yet come for it, but on principle. "Dismemberment of our empire," he said July 10, in the last letter he ever wrote, "will be a clear sacrifice of great positive advantages, without any counterbalancing good; administering no relief to our real disease, which is democracy, the poison of which, by a subdivision, will only be the more concentred in each part, and consequently the more virulent." *

Hamilton opposed to disunion.

Holding such an opinion of disunion, and believing that Burr would permit no obstacle to stand in the way of his unprincipled schemes, he had attended the Federal caucus at Albany (February 16), and used his influence against Burr in favor of the regular Republican candidate. He told the members of that caucus that the support of Burr by the New York Federalists would present him as their leader to the Federalists of New England; that an opinion was entertained in New England that "a dismemberment of the Union is expedient"; that it would "probably suit Mr. Burr's views to promote this result—to be the chief of the Northern portion; and that, placed at the head of the state of New York, no man would be more

He opposes the election of Burr.

* Works (Lodge's Edition), VIII., 615.

likely to succeed." * Hamilton and the conspirators were entirely agreed as to the readiness of Burr to use the chair of the governor of New York as a stepping-stone to the presidency of a Northern Confederacy.

Burr was beaten. The Federalist plotters, who honestly imagined themselves to belong to the intellectual and moral *élite* of the race, foiled in their attempt to create a Northern Confederacy through the help of the prince of demagogues and unprincipled political adventurers, and unable to arouse the members of their own party in New England to a consciousness of their sufferings, could only wait until some glaring misconduct on the part of their "Southern masters" would bring home to the dull minds of the masses of their party a realization of their wrongs, and drive them to seek the only possible remedy.

While Pickering, Griswold, Cabot, and Fisher Ames were waiting for a crisis which was to result in the formation of a Northern Union, Hamilton was expecting a crisis in which the issue would be joined between the friends of order and the enemies of government, and which would result, he hoped, in such a strengthening of the government as would make it adequate to its task. This belief in a crisis, which had led to the overthrow of his party, was to lead to his own death. Aaron Burr, balked by Hamilton in 1800 in his attempt to gain the presidency of the United States, and again in 1804 in his attempt to gain the presi-

Burr challenges Hamilton to a duel.

* Hamilton's Works (Lodge's Edition), VII., 320.

dency of a Northern Confederacy, resolved to kill him, and accordingly challenged him to fight a duel. When Hamilton received the challenge, he felt obliged to accept it. In the few short days that intervened between the challenge and the meeting, Hamilton found time to make a formal statement of his reasons for accepting it. Although he abhorred the practice of duelling, he thought that his situation imposed on him a "peculiar necessity" not to decline the challenge. "The ability to be in future useful . . . in those crises of our public affairs which seem likely to happen would probably be inseparable from a conformity with public prejudice in this particular." * They met July 10. Hamilton threw away his fire, but Burr fired, after aiming deliberately; and his great antagonist fell mortally wounded, a victim to his belief in a crisis that never was to come.

Hamilton's reasons for accepting the challenge.

On December 20, 1804, John Quincy Adams listened to a conversation between Giles of Virginia, the leader of the impeachment party in the Senate, John Randolph, who led it in the House, and Israel Smith, a Republican senator from Vermont. The Virginians treated the idea of an independent judiciary with the utmost contempt; they declared that there was not a word in the constitution about such independence, and that the pretension to it aimed at nothing less than to establish in the judiciary

Giles and Randolph's theory of impeachment.

* Works (Lodge's Edition), VIII., 628.

an aristocratic despotism. The power of impeachment was given, they contended, without limitation to the House of Representatives; the power of trying impeachments was given equally without limitation to the Senate. If the judges of the Supreme Court should dare, as they had done, to declare an act of Congress unconstitutional, it was the undoubted right of the House of Representatives to impeach them, and of the Senate to remove them, for holding such opinions, however sincere and honest they might be. Impeachment was not a criminal prosecution; it was not a prosecution at all. A removal by impeachment was nothing more than a declaration by Congress to this effect: "You hold dangerous opinions, and if you are suffered to carry them into effect you will work the destruction of the nation. We want your offices for the purpose of giving them to men who will fill them better."

Smith was not convinced by this reasoning. He maintained that honest error of opinion ought not to be a subject of impeachment.* When the trial took place, the knowledge that some other Republican senators had the same opinions made the Republican managers afraid of the theory required by their party. There were only twenty-five Republicans in the Senate, and of these the vote of twenty-three was necessary to conviction. Accordingly Joseph H. Nicholson, one of the Republican managers, repudiated what had been given out as the Re-

* Memoirs of John Quincy Adams, I., 322.

publican theory. "If declarations of this kind have been made, in the name of the managers I here disclaim them. We do contend that this is a criminal prosecution for offences committed in the discharge of high official duties."

The extreme views of Chase; significance of his acquittal.

The result showed that Jefferson's instinct in 1801 was sound. If any man could be removed from office for errors of opinion, that man was Samuel Chase. A Federalist of the most extreme type, he had left the bench without a quorum in order to make political speeches. His overbearing and insolent manner had on two occasions—in the trial of Fries for treason, and of Callender for having violated the Sedition Law—driven eminent Republican lawyers from his court. Surely if partisans could be provoked into regarding anything except actual crime as included under the misdemeanors spoken of by the constitution, it was such conduct as this. Nevertheless the largest vote on any of the eight articles in which the charges against Chase were brought was only nineteen.

Randolph moves to amend the constitution.

The animus of the Republicans was clearly shown by a motion made by Randolph (March 1, 1805) in the House of Representatives. Randolph moved to submit to the states the following amendment to the constitution: "The judges of the Supreme and all other courts of the United States shall be removed by the President on the joint address of the two Houses of Congress."* The

* Annals of Congress, 1804–1805, 1213.

motion was carried by a strict party vote, although it was in harmony with the theories of Democracy rather than those of Republicanism. But it was becoming more and more clear to Republican leaders that the inexorable condition of the success of the revolution of 1800 was that it should not be revolutionary. In 1820, Jefferson wrote of the judiciary of the United States: "Having found from experience that impeachment is an impracticable thing, . . . they consider themselves secure for life."* That impeachment was an impracticable thing for partisan purposes Republicans as well as Federalists learned in the trial of Chase. If Randolph's amendment had become part of the constitution, it is doubtful if people in general would have any more respect for the decisions of the Supreme Court than they now have for the editorials of the party press. The Federalist party seemed to be at its last gasp in 1805. Those who mourned the fate of the once powerful party might have derived some consolation from the fact that without the weapons that had been snatched from its feeble hands, its vigorous young conqueror could not henceforth maintain his supremacy.

* Jefferson's Works (Washington's Edition), VII., 192.

CHAPTER XXVII.

WEST FLORIDA.

WHEN the news that Spain had retroceded to France the Louisiana territory reached Jefferson, he began to cultivate the friendship of the English minister with great assiduity. Strong as was his desire for peace, he thought that disputes about the navigation of the Mississippi might lead to a war with France, and in that event he wished to have England as an ally. The purchase of Louisiana brought this courtship of England to an abrupt close.

How the news of the retrocession influenced Jefferson.

In the treaty in which the terms of the purchase were agreed upon, the boundaries of the territory were not defined. All that it contained on this point was that "Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states,"* was ceded to the United States. Livingston asked Talleyrand what the eastern boundary was. "I do not know," answered Talleyrand; "you must take it as we received it." "But what did you mean to take?" persisted Livingston. "I do not know,"

Boundaries of Louisiana.

* The paragraph was copied from the treaty of retrocession between France and Spain.

Talleyrand repeated. "Then you mean we shall construe it in our own way?" "I can give you no directions," replied Talleyrand. "You have made a noble bargain. I suppose you will make the most of it."* Livingston determined to make the most of it.

Previous to the treaty of 1762 which closed the French and Indian War, France owned a large part of North America. By that treaty, France divided her vast possessions on this continent, called Louisiana, between England and Spain, giving to England Canada and all French territories, east of the Mississippi except the island of New Orleans; and to Spain the island of New Orleans and all of the original province of Louisiana west of the Mississippi. At the same time, Spain ceded Florida to England.

Cessions of territory made in 1762.

England at once proceeded to divide her acquisitions on the Gulf of Mexico into two provinces. To one province—which was bounded on the north by a line running due east from the junction of the Yazoo and Mississippi rivers to the Appalachicola, on the east by the Appalachicola, on the south by the Gulf of Mexico, on the west by the Iberville and Lakes Maurepas and Pontchartrain—she gave the name West Florida; the province east of the Appalachicola she called East Florida.

East and West Florida.

At the close of the Revolutionary War, England ceded to Spain both of the Floridas—after having made

* State Papers, II., 561.

the northern boundary of West Florida the thirty-first parallel. Spain then owned not only her original possessions on the Gulf, but also those which France had ceded to England. In other words, she owned not only the island of New Orleans and the part of the Louisiana territory west of the Mississippi River *through the cession of France*, but East and West Florida *through the cession of England.*

These territories ceded to Spain in 1785.

By the treaty of San Ildefonso, secretly negotiated in 1800, Spain agreed to retrocede Louisiana to France on condition that Napoleon create a kingdom for the son-in-law of the king of Spain, and that it "should at no time, under no pretext, and in no manner be alienated or ceded to another power." The description of the territory which was retroceded contained two clauses which contradicted each other. Louisiana "with the same extent that it now has in the hands of Spain" included only the part of the original province which went by that name west of the Mississippi, and the island of New Orleans; Louisiana "with the same extent that it had when France possessed it" included the territory just mentioned and settlements as far east as the Perdido. Nevertheless the understanding between France and Spain as to the territory to be retroceded was perfect—as an overwhelming amount of evidence shows. Both understood that Spain was to return to France only the territory which France had ceded to her

The treaty of San Ildefonso.

—the part of the original province of Louisiana west of the Mississippi, and the island of New Orleans east of it.

When Talleyrand told Livingston that he did not know what the eastern boundaries of Louisiana were, he was acting under the instructions of Napoleon, who, for reasons of his own, wished to leave the Americans in doubt as to the extent of the territory they had bought. "If an obscurity did not already exist," Napoleon had said, "it would perhaps be good policy to make one." At the time when Talleyrand professed such ignorance, he had in his desk a copy of the instructions which he had himself given to the French officer who was to take possession of the Louisiana territory for France. In that paper the boundaries of the territory were carefully and clearly stated, and West Florida was *not* a part of it, although Texas was. *

Livingston himself was for a considerable time of the opinion that West Florida was not a part of the territory retroceded by Spain to France. On February 18, 1803, he wrote to Madison: "The essential fact is that the Floridas are not yet ceded." † Again on March 3: "The Floridas are still in the hands of Spain." ‡ And on March 11: "If they [the French] do not get the Floridas, they will put the less value on New Orleans." § On April 13, in a letter detailing a conversation with the French minister

Livingston claims West Florida.

* Madison to Livingston, January 31, 1804. State Papers, II., 574.
† State Papers, II., 533. ‡ Ibid., 538. § Ibid., 545.

about the purchase of Louisiana, he wrote: "I asked him [Marbois], in case of a purchase, whether they would stipulate that France would never possess the Floridas, and that she would aid us to procure them and relinquish all right that she might have to them."* On May 12: "I am satisfied that if they [the French] could have concluded with Spain, we should also have had West Florida." † But May 20, only eight days later, he wrote: "The sum of this business is to recommend to you in the strongest terms . . . to insist upon this [West Florida] as a part of your right, and to take possession at all events to the river Perdido. I pledge myself that your right is good." ‡ What had happened in eight days to make such a change in his opinions? The last letter cited contains the explanation of the change: "The moment I saw the words of the treaty of Madrid" (the treaty of retrocession from Spain to France, the paragraph from which defining the limits of Louisiana was incorporated in the treaty between the United States and France) "I had no doubt that it" (the cession from Spain to France) "contained all the country that France possessed by the name of Louisiana, previous to its cession to Spain, except what had been conveyed by subsequent treaties. . . . That my construction is right is fairly to be inferred from the words of the treaties and from . . . the Spanish minister's letter to Mr. Pinckney, in which he expressly says that France had

* State Papers, II., 503. † Ibid., 558. ‡ Ibid., 561.

recovered Louisiana, as it formerly belonged to her, saving the rights of other powers."

The words of the treaty upon which Livingston based the claim of the United States have already been quoted: Louisiana was "retroceded" "with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be according to the treaties subsequently entered into between Spain and other states." By ignoring the significance of *retro* in *retroceded*, and the understanding between Spain and France as to the territory which the one had ceded to the other; by ignoring the first clause in the sentence—"with the same extent that it now has in the hands of Spain"; by ignoring the understanding, which he himself had expressed in half a dozen letters, that West Florida was *not* a part of Louisiana,—Livingston was able to base a technical, legal claim to West Florida upon the clause "that it had when France possessed it." Up to 1762, West Florida had been a part of Louisiana; it was included in it when France possessed it; and, barring the significance of *retro* in *retroceded;* ignoring the meaning of the first clause; disregarding the fact that Spain and France and the United States understood that Louisiana did not include West Florida, Livingston might with some show of reason pledge himself that the right of the United States was good. These were very awkward exceptions; and therefore, in order to substantiate his claim,

Ground of Livingston's claim.

Livingston was obliged in effect to maintain that, although Spain did not intend to retrocede West Florida to France, though France did not know she had acquired it and the American government did not suspect it had bought it, Spain had ceded it, France had acquired it, and the United States had bought it, because, forsooth, the words of the treaty of retrocession, torn from their context, might bear such an interpretation! But Jefferson and Madison and the whole South were anxious to get possession of West Florida. Accordingly, Jefferson stated in a letter to Madison (August 25, 1803), his opinion that "our right" to it was "substantial."* The next year (April 15, 1804), Monroe, our minister to Spain, was instructed to insist upon our right to West Florida as "a *sine qua non*, and no price to be given for it." †

The Administration accepts Livingston's war.

That decision accounted for the sudden termination of Jefferson's attentions to the minister of England. When France owned Louisiana, he wished to have England's help in getting possession of New Orleans. After France ceded Louisiana, he wished to conciliate Napoleon, since Napoleon could influence Spain to give up West Florida. The wish to conciliate Napoleon was a powerful factor in shaping the character of Jefferson's second administration.

On October 24, 1803, John Randolph, the Republican

* Works, IV., 503.

† Jefferson to Madison, July 5, 1804. Works (Washington's Edition), IV., 550; State Papers, II., 627.

leader in the House of Representatives, declared on the floor of the House that West Florida had been bought by the United States. On November 30, he introduced a bill which, stripped of all verbiage, annexed West Florida to the United States. The bill finally passed both Houses, and was signed by the President February 24, 1804. *

Mobile Act.

The effect of the passage of this law upon Spain can readily be imagined. When Spain retroceded Louisiana to France it was hardly an act of free will—it was done because Napoleon demanded it, and because the Spanish government was not able to resist his demands. But, as

Spain resents the passage of the Mobile Act.

* The fourth and the eleventh section of the act contained the assumption that West Florida was a part of the United States. The fourth section provided that the territories ceded to the United States by the treaty, "and also all the navigable waters, rivers, creeks, bays, and inlets lying within the United States, which empty in the Gulf of Mexico east of the Mississippi River, shall be annexed to the Mississippi district, and shall, together with the same, constitute one district, to be called the 'District of Mississippi.'" The only way to give any meaning to this section is to assume that West Florida was a part of the ceded territory, since, unless it was, there were no rivers, bays, and inlets within the United States and east of the Mississippi. The eleventh section compelled this interpretation. It authorized the President, "whenever he shall deem it expedient, to erect the shores, waters, and inlets of the bay and river of Mobile, and of the other rivers, inlets, creeks, and bays emptying into the Gulf of Mexico east of the said river Mobile, and west thereof to the Pascagoula, inclusive, into a separate district, and to establish such place within the same as he shall deem expedient to be the port of entry and delivery for such district."

has been said, Spain, hard pressed as she was, would only consent to part with Louisiana on condition that Napoleon create a kingdom of Etruria for the son-in-law of the king of Spain, and that the territory should under no circumstances be ceded to another power. To see both these conditions violated, as they were, was bad enough, but to have the power which, from Spain's standpoint, had unrighteously come into possession of the Louisiana territory on the strength of a mere quibble, coolly appropriate territory to which it had no shadow of right, was too much. The Spanish minister to the United States, Don Carlos Martiñez Yrujo, with the Mobile Act in his hands,* told Madison that when he first heard that the American government had invaded the sovereignty of Spain, he had regarded it as an atrocious libel on the United States.†

The Spanish government expressed its opinion of the conduct of the United States in ways more emphatic than mere words. The troops of Spain made incursions from West Florida and Texas into the United States, captured American citizens, and took possession of their property.‡ In open violation of her treaty with the United States, she seized American ships and plundered American commerce. On December 7, 1805, when the representative of the United States at Madrid, George W. Erving, remonstrated against this, the Spanish minister said that "Spain could not allow American

* State Papers, II., 575. † Yrujo to Madison, March 7, 1804.
‡ State Papers, II., 682, 695.

ships to carry English property." "But we have a treaty which secures us that right," replied Erving. "Certainly," returned the Spaniard; "I know you have a treaty, for I made it with Mr. Pinckney." But, he said, his government did not intend to respect that part of the treaty any longer! "You may choose either peace or war," he continued, "'tis the same to me. I will tell you candidly that if you will go to war, this certainly is the moment, and you may take our possessions from us. I advise you to go to war now if you think that is best for you; and then the peace which will be made in Europe will leave us two at war." *

Defiance was the legitimate result of claiming a territory which belonged to Spain. The only natural reply to it was war. But to go to war with Spain was to go to war with Napoleon. When Monroe wrote from Spain to General John Armstrong, who had succeeded Livingston as minister to France, expressing the opinion that if the United States took a firm position towards Spain, France would use her influence in behalf of the United States, he was quickly undeceived. Armstrong asked: "What would be the course of this government [France] in the event of a rupture between us and Spain?" The answer was emphatic: "We must take part with Spain." †

It would be some consolation to know that the American government undertook to perpetrate its fraud

* Erving to Madison. † State Papers, II., 636.

upon Spain in a dignified way. But even this consolation is denied us. After an official announcement in the House of Representatives that West Florida was a part of the Louisiana Purchase, while a bill was pending in Congress which treated it as a part of American territory, W. C. Claiborne (December 20, 1803) took possession of Louisiana without demanding West Florida or even making a claim for it. The reason for this, Madison explained to Livingston, March 31, 1804, was the fear that a demand for West Florida would bring about a premature dilemma "between overt submission and a resort to force."* But the Mobile Act, which extended the revenue system of the United States to West Florida—fortunately in a clumsy circumlocution common to official documents—resulted in a more embarrassing dilemma. On November 8, Jefferson had the hardihood in his annual message to declare that the Mobile Act had been misunderstood by Spain!—in the face of the fact that his own Secretary of the Treasury had told him but a month before that "the public mind is altogether unprepared for a declaration that the terms and object of the Mobile Act have been misunderstood by Spain; for every writer, without a single exception, who has written on the subject seems to have understood the act as Spain did; it has been justified by our friends on that ground."† It is worthy of note that

Jefferson declares that the Mobile Act had been misunderstood by Spain.

* State Papers, II., 575. † Gallatin's Writings, I., 211.

Gallatin did not argue the question on its merits. He considered the effect of such a declaration upon the public alone. The sequel proved that the great Democratic leader knew better than his Secretary how blindly the public would follow a trusted chief.

But Jefferson had no intention to abandon the claim to West Florida. In spite of his horror of war, he was strongly inclined to recommend war with Spain. England was at war with France and Spain, and he thought that if the United States declared war against Spain—which would be equivalent to declaring war against France—England would stipulate with the United States not to make a treaty until our right to West Florida was acknowledged. Three times during August, and again in September, he wrote to Madison urging this policy.* In October, the question was discussed at a cabinet meeting, but nothing was decided.

Jefferson inclines to war.

On November 14, the Administration decided upon a policy towards Spain. The preceding month the news had reached the United States that Great Britain, Austria, and Russia had united against Napoleon. In the face of such a coalition it seemed to Jefferson impossible for Napoleon to fight his way to a peace in less than two years. "This new turn of affairs, therefore," Jefferson wrote to Madison, Octo-

The new Spanish policy.

*Writings of Thomas Jefferson (Ford's Edition), VIII., 374, 376, 377, 379.

ber 23, 1803, "gives time to make another effort for peaceable settlement." * Monroe, as has been said, was instructed to insist upon the right of the United States to West Florida, and "no price to be given for it." Monroe had insisted. But the emphasis with which Spain denied the "rights of the United States," convinced even Jefferson, sanguine as he was, that to demand West Florida of Spain, with or without bluster, would be futile as long as Spain was backed by Napoleon. It was the object of the new policy to induce Napoleon to throw his weight into the scale on the side of the United States against Spain. In Jefferson's language, "The extension of the war in Europe leaving us without danger of a sudden peace, depriving us of the chance of an ally, I proposed we should address ourselves to France, informing her it was a last effort at amicable settlement with Spain, and offer *to her*,† or through her, a sum of money for the rights of Spain east of Iberville, say the Floridas. . . . The first [money] was to be the exciting motive with France, who will be glad also to secure us from going into the scale of England." ‡ This, then, in effect, was the plan: to bribe France to compel Spain to give up East and West Florida, with a threat of war, and alliance with England, in the background in case France refused.

* Writings of Thomas Jefferson (Ford's Edition), VIII., 380.
† Italics not in the original.
‡ Writings of Thomas Jefferson (Ford's Edition), VIII., 383.

About two months before the Spanish policy was decided on, news reached the United States that England was making war on American commerce. Our story has already told of the attack which England had made on the commerce of the United States in November, 1793.*

England makes war on American commerce.

Early in 1794, the order which directed this attack was revoked and a new one was issued. The new order only prohibited American vessels from trading directly between any port in the French West Indies and any port in Europe. This order remained in force four years. In 1798, a new order added to the French West Indies the colonies of Holland and Spain, and neutrals were prohibited from trading directly between these colonies and Holland, Spain, and France. But what constituted direct trade? If an American vessel carried sugar and coffee from Martinique or San Domingo to Boston, must her owner unload her cargo and pay the duty on it, in order to make the trade between the French West Indies and France indirect? The British High Court of Admiralty answered that question in 1800. The court decided that an American vessel, the "Polly," loaded for Bilboa with sugar and cocoa which she had brought from Havana, was not engaged in direct trade between Spain and her colonies, *because her cargo had been unloaded in the United States, and the duty had been paid,* before the ship started on a new voyage to Spain. The

* See page 226.

principle upon which this decision was based had been announced by the English judge, Sir William Scott, the year before. "By importation," he said, "the produce became part of the national stock of the neutral country; the inconvenience of aggravated delay and expense was a safeguard against this right becoming a special convenience" to the country with which England was at war. Doubtless the British government supposed that the "inconvenience of aggravated delay and expense" would prevent such a trade from being especially profitable to the United States. They were mistaken. In 1803, when the war in Europe was renewed, American merchants began again to trade between the belligerents and their colonies. In two years almost the entire carrying trade of Europe was in their hands.

This unexpected result was highly unsatisfactory to England for two reasons. First, it completely warded off the blow which she aimed to strike her enemies through their colonies. The Rule of 1756 was intended to weaken her enemies by crippling their colonies. Under the modification of it made by her Orders in Council, the colonies of her enemies were more prosperous in war than they had ever been in time of peace. At an immense cost, she had built up a fleet which swept the merchant marine of her enemies from the sea. Of what avail was it if the merchant marine of the United States supplied the wants of her enemies and their colonies as effectually in time of war as their own marine had done

in time of peace? But secondly, the Orders in Council of England, as interpreted by her courts, were building up the resources of her most formidable commercial rival, the United States, and that at the expense of her fleet. At a time when England was struggling for life with the greatest military genius of modern times, backed by the resources of a large part of continental Europe, thousands of her sailors were deserting every year to serve on American vessels because the profits of American trade enabled Americans to give them better pay and better food.

The English Court of Admiralty proved equal to the occasion. Flatly reversing his decision in the case of the "Polly," Sir William Scott ruled in the case of the "Essex," July 23, 1805, that the unloading of her cargo and the payment of a duty were not sufficient evidence that the neutral vessel intended to terminate her voyage in an American port. If the neutral vessel sailed from Martinique to Charleston in order to go to London, the trade was direct in intent, and the landing of her goods and the payment of a duty did not prevent it from being direct in fact.

Rule of 1756.

The effect can be imagined. With a single stroke of the pen Sir William Scott endangered millions of dollars' worth of American property. Thousands of merchants who supposed themselves to be prosperous suddenly found themselves face to face with ruin. From Charleston to Boston a cry of indignant anger went

up at this outrageous invasion of the rights of neutrals.

Jefferson does not at once resent it.

During the summer and a part of the autumn of 1805, Jefferson, as has been said, had been strongly inclined to a war with France and Spain, with England as an ally. One would naturally suppose that the news that England was capturing American vessels by the score, not only without warrant, but in violation of the decisions which her own courts had rendered but four years before, would have driven all thought of an English alliance out of his head. But both he and Madison were so eager for England's help in case of a war with France and Spain that they seemed to think it best to pocket her insults in silence. The English minister to the United States, Anthony Merry, wrote to his government: "Although I have seen Mr. Madison twice since the attention of the public has been so much engaged with this subject" (the British attack upon American commerce), "he has not thought proper to mention it to me." When Merry saw Jefferson, the latter talked freely, almost confidentially, about the Spanish difficulties and the prospect of a war with Spain, but said not a word about the outrages, which were an exact repetition of those on account of which his party had denounced the Federalists for not going to war in 1793.

Certainly these outrages were serious enough to have attracted his attention, especially since they were

an abrupt departure from the policy which Great Britain had been pursuing for the preceding ten years. If he had seen fit to imitate the example of Washington in a similar crisis, he would not have allowed the desire to gain West Florida to prevent him from protesting promptly and vigorously against this attack upon the rights of America. In doing so he would not only have upheld the national honor, but he would have taken a step towards the realization of those American ideals which he so fondly cherished. The Rule of 1756 was based on an utterly un-American idea—that colonies exist solely for the good of the mother country; that in making laws for them regard should be had, not to their interests, but to the interests of the mother country. How un-American this was no one knew better than the author of the Declaration of Independence. "If your colonial theory were true," Jefferson might have said to England, "if colonists were so many cattle to be disposed of absolutely as the mother country may direct, your Rule of 1756 might be well founded. But from the American point of view it is an attempt to enforce in war a wrong which we are unable to prevent in peace—an attempt to which this country cannot submit without being false to the idea that underlies its existence as a nation. The American government is based on the principle that governments 'derive their just powers from the consent of the governed.' Your colonial theory and your Rule

The Rule of 1765 out of harmony with American ideas.

of 1756 are based upon the principle that 'might makes right,' that the power of the mother country gives it the right to dispose of the interests of its colonists without regard to their wishes."

CHAPTER XXVIII.

JOHN RANDOLPH.

THE Republicans won an overwhelming victory in the presidential election of 1804. Jefferson was elected President, and George Clinton Vice-President by one hundred and sixty-two out of a total of one hundred and seventy-six votes. And no wonder. Excepting the attack upon the federal judiciary, nothing had occurred during Jefferson's first administration to antagonize moderate Federalists. The believers in a crisis were of course dissatisfied; watching for signs of approaching anarchy was their chief avocation. But the sober, well-balanced, vigorous men who had constituted the rank and file of the old Federalist party, having seen the doctrine of state sovereignty completely disregarded in the purchase of Louisiana and in the laws providing for its government, were certainly warranted in believing that Jefferson was sincere when he said that every difference of opinion was not a difference of principle—that there was not, after all, any radical difference between Federalism and Republicanism.

The great Republican victory in 1804.

Jefferson's first inaugural showed that he himself had been educated by the events of his first administration. His message to Congress in the preceding November had told that nearly four

Jefferson's second inaugural.

million dollars of the public debt had been paid within the year, and more than twelve millions since 1801. In his inaugural, his mind ran forward to the time when the discharge of the whole of the public debt would leave the government free either to reduce the revenues or devote them to other purposes. Were his thoughts still dominated by the conception that the national government was but the foreign branch of our governmental system? Far from it. "Redemption once effected," he said, "the revenue thereby liberated may, by a just repartition among the states and a corresponding amendment of the constitution, be applied, in time of peace, to rivers, canals, roads, arts, manufactures, education, and other great objects within each state. In time of war—if injustice, by ourselves or others, must sometimes produce war—increased as the same revenue will be increased by population and consumption, and aided by other resources reserved for that crisis, it may meet within the year all the expenses of the year without encroaching on the rights of future generations by burdening them with the debts of the past." This was Jefferson the Democrat who was speaking. Jefferson the Democrat believed in amending the constitution so as to enable the national government to clean out rivers, dig canals, make roads, promote the arts, manufactures, and education. It was Jefferson the state-sovereignty Republican who, in the first inaugural, had said: "Sound principles will not justify our taxing the industry of our

fellow citizens to accumulate treasure for wars to happen we know not when, and which might not, perhaps, happen but from the temptations offered by that treasure." Jefferson the Republican was thinking in 1801 of the abuses into which the government would be tempted by the possession of revenues beyond its absolute necessities; Jefferson the Democrat was thinking in 1805 of the beneficent uses to which the government might devote a part of its revenues when the public debt should be paid.

But in expressing himself as though he regarded war as a contingency to be provided for, Jefferson did his thoughts injustice. In his theories as to foreign affairs he was still a Republican; with all his old-time fervor he believed in the coercive power of commercial restrictions—at least in relation to England—as his second administration was to show.

Foreign ministers were not deceived by the warlike paragraph in Jefferson's inaugural. Louis Marie Turreau, the first minister from France to the United States since Adet's recall, was able, only a few months later, to state the policy and aims of the government. In a despatch to Talleyrand dated July 9, he said: "The federal government . . . will avoid every serious difference which might lead to aggression, and will constantly show itself an enemy to war. But does the system of encroachment which prevails here agree with a temper so pacific? Certainly

Turreau's estimate of Jefferson's policy.

not, at first sight; and yet, unless circumstances change, the United States will succeed in reconciling the contradiction. To conquer without war is the first fact in their politics." *

Turreau himself was teaching Jefferson that the policy of conquering without war had its inconveniences, even if it should prove to be successful. Twice within a week he dared to transmit the commands of Napoleon to the President of the United States.

The American government obeys the commands of Napoleon.

When General Moreau was on the point of visiting the United States, Turreau, obeying the orders of Napoleon, wrote, August 14, 1805, to Madison that his (Moreau's) arrival and residence in the United States "should be marked by no demonstration which passes the bounds of hospitality." † When Napoleon learned that a bill introduced through the influence of Madison, at the suggestion of Turreau, providing that no trade, whether armed or unarmed, should be carried on by Americans with San Domingo, had failed to pass, he was in a great rage. San Domingo was a French colony which had thrown off the yoke of France, and Napoleon was unable to subdue it. Wishing to get the help of the United States, he had directed Turreau to request the American government to stop all American trade with San Domingo. When Napoleon learned that the bill, introduced through complaisance to him, had failed to

* Quoted by Henry Adams, III., 84.

† Turreau to Madison, August 14, 1805.

pass, he ordered Talleyrand to say to Armstrong that the trade was "shameful," and that it was "time" for it "to stop." Talleyrand wrote Armstrong that this system "must last no longer," and, in a note to Madison, Turreau repeated the phrase "must last no longer" *

This time Congress was obedient. The last day of February, 1806, Jefferson signed a bill which stopped all trade for a year with every port in San Domingo that was not in the hands of the French. Nor can the disgrace of the law be laid at the door of the Administration alone. Jefferson had transmitted Napoleon's commands to Congress: when the House of Representatives and the Senate passed the bill, they knew they were obeying the commands of Napoleon.

Although the United States was defied by Spain, bullied by France, and robbed by England, Jefferson did not intend to go to war, but neither did he intend to give up West Florida. He did not indeed continue to humiliate the nation by submitting to the new outrages of the British government in silence, or with a mildness of protest which was worse. But the change in his policy was not due to a stronger determination to cause Great Britain to respect the rights of the United States; it was due to the fact that he had come to believe that he could get West Florida without England's help.

Shortly after the meeting of the cabinet in which it was decided to attempt to get West Florida through the

* State Papers, II., 726.

influence of France a, despatch was received from Armstrong indicating that Napoleon was willing to act in conformity with the desires of the United States. The despatch narrated that an unofficial agent had brought an unsigned memorandum from Talleyrand to the American minister, advising him to write another note to Spain, warning her of the consequences of persisting in her course, and encouraging her to join with the United States in referring the matters in dispute to Napoleon. "The more you refer to the decision of the Emperor, the more sure and easy will be the settlement." If Spain would consent to part with the Floridas, as she doubtless would at the Emperor's request, France proposed that the United States should pay Spain ten million dollars—finally reduced to seven by deducting the three million dollars' worth of claims which the United States had against Spain for spoliations of American commerce.*

Napoleon's willingness to use his influence with Spain to induce her to part with the Floridas.

It is amusing to see how quickly Anthony Merry, the British minister, was made to feel the effect of this despatch upon the American government. It was received November 13, 1805. On December 2, he wrote to his government: "I am sorry to add that those public prints which are considered as the organs of the government

Change in the attitude of the government towards England.

*Armstrong to Madison, Sept. 10, 1805. MSS. State Department Archives. Henry Adams, III., 104.

[of the United States] have of late lost sight of their complaints against Spain, with a view, as may be suspected, to excite and direct the whole national indignation against Great Britain." One can hardly help suspecting that those "public prints" had been losing sight of their complaints against Spain for just about two weeks! "I have been sorry," he continued, "to find in my recent conversations with Mr. Madison that he has treated the subject in a much more serious light than he had at first represented it to me."* The "more serious light" of course was the effect of Armstrong's despatch. That despatch seemed to Jefferson and Madison to bring the goal of their hopes in sight. The prize so eagerly coveted, for the sake of which they had smiled upon England while she was robbing American ships and impressing American seamen, and held out their hands to France while she was upholding Spain in her insulting defiance, was at last, as they thought, within their grasp. It was indeed true that the money which was to "induce" France to "coerce Spain" to sell to the United States property which the United States claimed to have bought had to be voted. But as the Republicans had an overwhelming majority in both Houses of Congress, Jefferson did not doubt that Congress would vote the money without hesitation.

The method by which he proposed to bring his policy before Congress was, however, precisely the one

* MSS. British Archives.

which was best calculated to arouse the antagonism of men of independence.

He intended to recommend two policies, an "ostensible" and a "real" one. The "ostensible" policy, the object of which was to correct the impression in Europe that "our government was on Quaker principles," ready to turn the left cheek when it had been smitten on the right, was to be stated in his annual message; the real one, to be secretly communicated to Congress in a separate message a few days later.

Jefferson's Spanish policy.

From Jefferson's accession to the presidency to the meeting of the Ninth Congress his recommendations had been carried into effect with almost as little question as though he had been the czar of Russia. But when he undertook to carry out his two-faced Spanish policy, he encountered bitter opposition. In order to understand it, we must make some attempt, even at the cost of a long digression, to determine the orbit of that comet of American politics, John Randolph.

Born in 1773, of one of the most influential families in Virginia, John Randoph entered public life at the age of twenty-six, when the passions of American Federalists were glowing at a white heat through the outrages of the *soi-disant* democrats of France, and the passions of American democrats were burning with equal fierceness through the tyrannical conduct of the Federalists. Virginia and Kentucky had just fulminated the doc rine

John Randolph's entrance into politics.

of nullification, and the former was preparing to back it up by force. Washington had just made a solemn appeal to Patrick Henry to announce himself as a candidate for Congress or for the state legislature, in order that his great powers might serve as a dike against what seemed to be the rising tide of anarchy. In response to this appeal, the old orator had reluctantly come out of his solitude to devote the feebleness of his old age, as he had done the vigor of his prime, to the service of his country. By the tavern porch at Charlotte, he had just made an impassioned appeal to the people of Virginia not to raise their "parricidal hand" against the Father of his Country, who would be certain to lead the army of the nation even in a conflict with his native state. When he had sunk back in his seat utterly exhausted, a tall, thin young man, with a beardless face, keen, piercing eyes, and a shrill and penetrating voice, arose to reply. That young man was John Randolph.

Tradition has it that he spoke three hours and held an audience that had just been electrified by the eloquence of Patrick Henry. He declared that Virginia was justified in establishing an armory for the purpose of opposing the administration of John Adams; that the use of arms to "oppose oppressive measures was in principle the same" whether the oppression was due to Lord North or to John Adams. This opinion, shared by a great majority of Americans in 1799, was John Randolph's to the end of his life.

He entered Congress in December, 1799. The self-confidence which had caused him to pit himself against Patrick Henry, and the ability which had enabled him to hold his own with the great orator, made a decided impression upon his party associates. But these very characteristics made the blind following of any leader very difficult. In July, 1801, he wrote to his intimate friend Joseph Nicholson that "without a *substantial reform* we shall have but little reason to congratulate ourselves on the mere change of men," and added in a foot-note this significant question: "What think you of the New Jersey supervisor?"—James Lynn, a member of the last Congress, whose doubtful vote had given the state of New Jersey to Jefferson and whom the President had just appointed to that position.

His first term in Congress.

When Congress met in December, 1801, Nathaniel Macon of North Carolina, a thoroughly pure and upright Republican and, like Randolph, an enthusiastic state-sovereignty man, was elected Speaker of the House of Representatives. He made Randolph chairman of the most important committee in the House, the Committee of Ways and Means. During the famous "repealing session," as Randolph afterwards called it, he did not take the radical ground to which both his opinions and his temperament inclined him. He thought that Congress ought to pass a declaratory act on the subject of the Sedition Law, and that it ought to return the fines of all those who

His course during the repealing session.

had suffered under it. But being told, doubtless by Jefferson, that "we came in as reformers, that we should not do too much," he exerted himself to carry out Jefferson's policy of conciliation.

His conduct in relation to Louisiana forms the one utterly inexplicable episode in his public life. That a man who always spoke and thought of Virginia as his country, who was so much of a doctrinaire in his devotion to his pet doctrine that he afterwards boasted that he had never voted for the admission of a state into the Union, should vote to carry into effect a treaty in which the President and Senate of their own good will and pleasure had added a vast empire to the territory of the United States, an empire absolutely at the mercy of the representatives of the nation, to be governed as a colony, organized into territories, or admitted as states, as the irresponsible sovereign nation might decree; that he should vote to confer upon Jefferson the same despotic power that had been wielded over the territory by the king of Spain, are facts upon the explanation of which it would be idle to speculate.

His conduct in relation to Louisiana.

It was impossible for him to continue to be the advocate of such centralizing measures, especially under the leadership of another man. After the Louisiana session there were various indications that he was returning to the standpoint of 1798. But perhaps no one thing exerted a stronger influence in that direction than

the conduct of the government in reference to certain so-called Yazoo claims.

The Yazoo fraud.

In 1795, the legislature of Georgia sold thirty-five million acres of land, situated between the Tombigby and the Mississippi rivers, to four land companies, called Yazoo, for $500,000. It soon became evident that the act was passed through the grossest corruption, every member of the legislature but one who voted for the law having been proved to have had a pecuniary interest in the transaction. The people of Georgia elected a new legislature which declared the sale null and void, and called a state convention which made the repealing act part of the state constitution. In the mean time, large numbers of people had bought and paid for land of the Yazoo companies. On the one side were these people, many of them entirely innocent; on the other, Georgia asserting and exercising her right as a sovereign state to declare null and void the act of her corrupt agents—to say nothing of the United States, to whom perhaps the territory really belonged, since it was an open question whether the land which the legislature of Georgia had fraudulently sold really belonged to that state or not.

In 1802, Georgia ceded to the United States her rights over the territory which now constitutes the states of Alabama and Mississippi—in which the Yazoo lands lay,—and the law which authorized the cession provided for a compromise with the Yazoo claimants.

On April 24, 1803, Madison, Gallatin, and Levi Lincoln, as commissioners on behalf of the United States, met commissioners on behalf of Georgia and agreed upon a compromise which was supposed to be final. Among other provisions, this compromise provided that the state of Georgia should be paid $1,250,000.

The Yazoo compromise.

There were two features of the Yazoo business which made any sort of compromise with the Yazoo claimants peculiarly repulsive to Randolph: the fraudulent character of the sale, and the attempt of Georgia as a sovereign state to declare the fraudulent act null and void. He would have found it hard to acquiesce in any arrangement which called in question the right of a sovereign state to do as it pleased, but most of all when that state was attempting to exercise its sovereignty in setting aside a grossly corrupt act. On February 20, 1804, accordingly, he introduced a series of resolutions which declared that Georgia had the right to rescind the Yazoo Act, and forbade the appropriation of money to settle the claims.

Why Randolph disliked it.

The question came up again in December, 1804. When Randolph saw the Postmaster-General, Gideon Granger,—who had been so exceedingly indiscreet, to use the mildest possible term, as to permit himself to be employed by the claimants as their agent,—on the floor of the House, trying to persuade members to vote for the Yazoo

Randolph censures the Administration.

measure, his indignation was measureless. Enraged beyond endurance at the spectacle of the head of an executive department lobbying for what he believed to be a corrupt measure, Randolph broadly hinted that the Administration itself deserved censure. "Is it come to this?" he asked. "Are heads of executive departments to be brought into this House with all the influence and patronage attached to them to extort from us now what was refused at the last session of Congress? . . . It is the spirit of Federalism—that spirit which sees in government nothing but a job, which is never so true to itself as when false to the nation. . . . Of what consequence is it that a man smiles in your face, holds out his hand, and declares himself the advocate of those political principles to which you are attached, when you see him acting with your adversaries upon other principles which the voice of the nation has put down? . . . If Congress shall determine to sanction this fraud upon the public, I trust in God we shall hear no more of the crimes and follies of the former Administration."

Madison and Randolph.

Randolph had to contend with the entire Administration, and especially with Madison. The sharpest reply that was made to him came from a brother-in-law of Madison.

Directly after the close of the Yazoo debate, Randolph appeared before the Senate to open the impeachment of Judge Chase. That impeachment, as we know, resulted in the utter defeat and discomfiture of Randolph.

Madison took no pains to conceal even from Federalists his gratification at Randolph's chagrin. "I had some conversation with Mr. Madison on the subject," John Quincy Adams wrote in his diary on the evening of March 1; "he appeared much diverted at the petulance of the managers over their disappointment." *

Madison's gratification was natural in view of the fact that Randolph cordially disliked him. In Randolph's opinion, Madison "was a colorless semi-Federalist, an intriguer with Northern Democrats and Southern speculators, one who never set his face firmly against an intrigue or a job." † And it was in the interest of Madison, universally known to be a candidate for the presidency at the close of Jefferson's second term, that Jefferson expected that Randolph would act the part of a man on a chess-board, to-day declaring as the mouthpiece of the Administration that West Florida belongs to the United States and introducing a bill to extend our revenue system over it, to-morrow voting $2,000,000 for the purchase of a territory which he has just declared is ours already because that is now the will of the Administration—and this in apparent opposition to the wish of the cabinet, which would make a brave stand for the rights of the nation were it not overruled by the mean and grovelling House of Representatives! Randolph, sorely wounded by his defeat in the impeachment of

* Memoirs of John Quincy Adams, I., 365.
† Adams' Life of Randolph, 161.

Chase, his Republican virtue outraged at what seemed a demonstration of corruption in high places, is now expected to become himself a sort of international lobbyist, is now expected to use his influence as leader of the House of Representatives to vote money to bribe Napoleon to bully poor Spain into abandoning her claim to West Florida !

CHAPTER XXIX.

CONQUERING WITHOUT WAR.

THE Ninth Congress met December 2, 1805. After a sharp contest, Macon, whose Republicanism was too old-fashioned to suit many members of the House, was re-elected Speaker, and John Randolph was given his old place at the head of the Committee of Ways and Means. The next day the annual message was read. The paragraph relating to foreign affairs stated the wrongs of the United States in a very vigorous manner, and concluded with what seemed very much like a recommendation to Congress to declare war. "We ought still to hope," it said, "that time and a more correct estimate of interest as well as of character will produce the justice we are bound to expect; but should any nation deceive itself by false calculations and disappoint that expectation, we must join in the unprofitable contest of trying which party can do the other most harm." Right upon the heels of this martial pronouncement came the secret message. Congress closed its doors—to learn that Jefferson's warlike talk was for effect only; that what he wanted was money to buy the territory a part of which Congress had already declared belonged to the United States.

Jefferson's two messages.

Jefferson's two messages were referred to a special committee of which John Randolph was chairman.

Whether by accident or intention, the only member of the committee who was blindly subservient to Jefferson was Barnabas Bidwell, a new member from Massachusetts.* Randolph at once called upon Jefferson and asked him what his secret message meant. Jefferson answered that an appropriation was wanted for the purchase of Florida. Randolph told the President "that he would never agree to such a measure, because the money had not been asked for in the message; that he could not consent to shift upon his shoulders or those of the House the proper responsibility of the executive; but that even if the money had been explicitly demanded, he should have been averse to granting it, because, after the total failure of every attempt at negotiation, such a step would disgrace us forever." He went to Madison, and

Randolph opposes the Spanish policy.

*Josiah Quincy gives an amusing account of Randolph's manner on the occasion of Bidwell's first speech. He had come to Washington with a great reputation as a speaker. On the day of the speech, Randolph, according to his custom, had ridden to the Capitol, attended by his servant. "He was dressed in his usual morning costume—his skeleton legs cased in tight-fitting leather breeches and top-boots, with a blue riding-coat, and the thick buckskin gloves from which he was never parted, and a heavily loaded riding-whip in his hand. After listening attentively for about a quarter of an hour he rose deliberately, settled his hat on his head, and walked slowly out of the House, striking the handle of his whip emphatically upon the palm of his left hand, and regarding poor Bidwell, as he passed him, with a look of insolent contempt, as much as to say, 'I have taken your measure, sir, and shall give myself no further concern about you.'"—Life of Quincy, 95.

Madison told him "that France would not permit Spain to adjust her differences with us; that France wanted money, and that we must give it to her or have a Spanish and French war." "From the moment I heard that declaration," Randolph said afterwards, "all the objections I originally had to the procedure were aggravated to the highest possible degree. I considered it a base prostration of the national honor to excite one nation by money to bully another nation out of its property."*

After December 7, Randolph did not call a meeting of his committee until December 21, when he caused it to instruct him to write to the Secretary of War inquiring what force was needed for the protection of our southern frontier. At another meeting, he drew up a report which was adopted by the committee and which spoke in the same tone as the public message; it closed with a resolution to raise troops for the protection of our southern frontier "from Spanish inroad and insult." On January 3, when the report was laid before the House in secret session, Bidwell immediately moved another resolution appropriating money for extraordinary expenses in foreign intercourse.

Action of the committee on the two messages.

Despite Randolph's utmost efforts, the resolution was carried. On January 16, a bill was passed appropriating two million dollars for extraordinary expenses attending "the intercourse between the United States and foreign

Passage of the bill appropriating money for "extraordinary expenses."

* Annals of Congress, 1805–1806, 947.

nations." But the smallness of the majority showed the effect of Randolph's efforts. Although the Republicans had about one hundred and fifteen in a House of one hundred and forty members, only seventy-six of them voted for the infamous bill. On February 7, the bill passed the Senate, but only through the influence of Jefferson. Some of Jefferson's stanchest followers condemned it in unmeasured terms. One of them, Anderson of Tennessee, said that he wished "the devil had it," that it was the worst measure Jefferson had ever determined on, but "so he would have it and so it must be."* A close observer, noting how the bill was pushed through both Houses of Congress by Jefferson's influence, made this remark: "His [Jefferson's] whole system of administration seems founded upon the principle of carrying measures through the legislature by his personal or political influence."†

Jefferson signed the bill February 13. If Randolph had failed to defeat it, he had at least helped to prevent it from accomplishing its purpose. Long before the despatch from Madison to Armstrong authorizing the bargain with Napoleon reached Paris, Napoleon's offer to induce Spain to cede the Floridas to the United States had served its most important purpose: it had caused the American government to take the first step towards practical alliance with France.

* Memoirs of John Quincy Adams, I., 406.
† Ibid., 403.

On December 4, 1805, within three weeks from the time Armstrong's despatch announcing Talleyrand's offer arrived, the "National Intelligencer," the organ of the Administration, republished Madison's speech in behalf of commercial restrictions against Great Britain delivered in 1794, when England was making the same war upon American commerce under the rule of 1756 that she was making now. Bills providing for restrictions upon British commerce were introduced in both the Senate and the House, and in March, 1806, the House began the debate on the policy of commercial restrictions.

Policy towards England.

It was in this debate that John Randolph made the great speech of his life. Believing that the proposal to restrict English commerce was part and parcel of the scheme to conciliate Napoleon, he denounced it with all the hot indignation with which he had thundered against the Yazoo corruption, and the bribe which Congress had authorized to be given to the Emperor of the French. Although, as he said, he entered upon the discussion "manacled, handcuffed, tongue-tied" because his lips were sealed on "subjects of momentous foreign relations which are indissolubly linked with the present question," in language that cut like a knife he laid bare the real nature of the wretched Spanish business: "Where are you going to send your political panacea, resolutions and handbills excepted; your sole arcanum of government, your King

Randolph's speech in opposition to it.

Cure-all? To Madrid? No, you are not such quacks as not to know where the shoe pinches. To Paris! You know at least where the disease lies, and there you apply your remedy. . . . I will send her [Great Britain] money on no pretext whatever; much less on pretence of buying Labrador or Botany Bay, when my real object was to secure limits which she formally acknowledged at the Peace of 1783." He taunted the Administration with the secrecy with which it felt obliged to veil its Spanish policy: "When the nation anxiously demands the result of your deliberations, you hang your head and blush to tell. You are afraid to tell. Your mouth is hermetically sealed. Your honor has received a wound which must not take air."

He protested against the undue influence of the executive precisely as Jefferson had done in the administrations of Washington and Adams: "Do what you will, every measure short of war, and even the course of hostilities, depends upon him. . . . You give him money to buy Florida, and he purchases Louisiana." In a later speech he charged the executive with permitting Congress to pass the Mobile Act in ignorance of important pertinent facts: "We bought Louisiana from France under the terms of the treaty of San Ildefonso. According to the executive understanding, that country extended to the Perdido and the river Bravo. We immediately legislated on our first claim, and passed a law erecting the bay and shores of the

Mobile into a revenue district. What was the fact? That we were legislating without information. We had never been told that Laussat had been directed to receive the country only to the Iberville and the lakes." That was true. Laussat was the French commissioner who had been sent by Napoleon to receive New Orleans from Spain. He was applied to by the Administration for information as to the boundaries of Louisiana. He told the truth—that Louisiana was bounded by the Iberville and the lakes on the east, and the Bravo on the west; while it did not include West Florida, it did include Texas.*

But eloquence, wit, sarcasm, argument, a good cause, were unavailing against the antagonist with whom Randolph had to contend. If Randolph had been of a kindly nature, if he could have tempered his indignation at what he deemed dishonorable conduct with some feelings of kindness for those whom he thought to be guilty of it, if he could have held his egotism in restraint by a supreme regard for the public good, he might have changed the course of history. But the man whose temper was like a cyclone, prostrating indiscriminately everything that stood in its path, revelling in the exercise of his extraordinary powers of vituperation when he must have known that it was only making his ultimate defeat more certain and more complete, in a struggle for political

Randolph's defeat.

* State Papers, II., 574.

power with Jefferson was like a child contending with a trained athlete. With a mastery of the arts of management and conciliation rarely equalled even in American politics, the magician of the White House, as Josiah Quincy afterwards called Jefferson, gradually won away Randolph's following, promoting Nicholson, Randolph's ablest and most intimate friend in the House, to the bench, writing letters of consummate tact and kindliness to Macon, doubtless holding innumerable friendly conversations,—which was all the easier since the friendly feeling was genuine, not assumed for the occasion,—until, when the question came to a vote, the man who had so recently ruled the House of Representatives with an apparent absoluteness, like that with which he governed his own plantation in Virginia, had barely half a dozen followers left.

Jefferson's ability as a political leader.

"Mr. R. withdrew before the question was put," wrote Jefferson to Monroe, Randolph's candidate for the presidency, in a letter intended to prevent his old friend from being estranged from him. "I have never seen a House of Representatives more solidly united in doing what they believed to be for the best for the public interest. There can be no better proof than the fact that so eminent a leader should at once and almost unanimously be abandoned." Was the union of the House due to its conviction of what was best for the public good? Jefferson's modesty prevented him from saying, perhaps from perceiving,

that it was due to quite a different cause: his own extraordinary ability as a political leader.

About a year later, Nicholson wrote Monroe that "a literal copy of Jay's treaty if ratified by the present Administration . . . would now command the support of a large body who call themselves Democrats. Such is our present infatuation." In the same letter, he said that the men who still "retain the feelings of 1798, and whom I denominate the old Republican party," though personally attached to the President, "have not his confidence." *

And so the President triumphed. He wanted West Florida, and he did not wish to go to war to obtain it. That was why he asked Congress, at the bidding of Napoleon, to prohibit trade with San Domingo, and to appropriate money for the purchase of territory a part of which, according to him, already belonged to us. That was why he singled out England as an object of hostile legislation when Spain had "pirated" upon our commerce, invaded our territory, and captured our citizens with impunity. On March 26, he signed the bill to prohibit the importation of certain articles of British manufacture after November 5. He had triumphed. But in the very hour of his triumph the question might have been raised, was it worth while? Could a man who had taken office with purposes as high as any ever cherished by a ruler, and as the representa-

Jefferson's triumph.

* Adams' Life of Randolph, 217.

tive of all the idealistic hopes of the nation,—could he afford to trail his own lofty ideals in the dust, to tarnish the nation's honor, in order to get West Florida? And if West Florida was worth so much, would it not have been better to go to war to get it? Was conquering without war, by the aid of such methods, really to be preferred to the old method of gaining victories? Such questions would have derived peculiar significance from the fact that Jefferson's measures had planted in the minds of the New England Federalists the ineradicable conviction that he was guided by the wish to promote the interests of France at the expense of those of England.

But, after all, the real victory was won by Napoleon. In accordance with the proposal of his own minister, we authorized Armstrong to offer money for the Floridas which was intended as a bribe for Napoleon. On May 1, Armstrong made the offer; and, on its rejection, repeated it, at Talleyrand's suggestion, May 25, when it was accepted. All that seemed necessary to bring the matter to a definite conclusion was for the puppets at Madrid to go through the form of consenting to the arrangement. The puppets performed their parts: Spain practically agreed to sell the Floridas to the United States, when, to the utter astonishment of the French minister at Madrid, of Armstrong, and even of Talleyrand himself, Napoleon sternly rebuked his minister for executing instructions which he himself had authorized, and repudiated the

Napoleon refuses to permit Spain to sell the Floridas.

whole arrangement!* He had scored one point in his game with Jefferson. Through the promise of the Floridas, he had got the United States to take a step towards hostilities with England. Why keep the promise after it had served its purpose? Jefferson had been false to his own ideals, broken with the best elements in his own party, only to promote the objects of Napoleon.

Before Congress adjourned, a law relating to domestic matters of far-reaching influence was passed. It provided for commissioners to lay out a national road from Cumberland in Maryland to the Ohio River. It was opposed on the ground that Congress had no power to construct roads. To obviate this objection, the consent of the states through whose territory the road was to pass was required.

The law relating to the Cumberland road.

The Ninth Congress met for its last session December 1. Jefferson's annual message told Congress that the receipts in the treasury during the financial year that had just closed amounted to nearly fifteen million dollars, and that more than twenty millions of the principal of the public debt had been paid during the four and a half years preceding. Exulting in the prospect that there would soon be a surplus in the treasury, he recommended that it be devoted to the building of roads, the making of canals, the creation of a national university, "and such other

Jefferson on internal improvements.

*See Henry Adams, IV., 375, 386.

objects of public improvement as it may be thought proper to add to the federal enumeration of powers." Jefferson the Democrat was speaking; he was thinking of the innumerable benefits which a wise exercise of enlarged federal powers might confer upon the country. Jefferson the state-sovereignty Republican, who thought that our political salvation lay in confining the national government within the narrowest possible limits, in leaving to the states as much power as possible, was silent.

Gallatin's report on a system of national roads.

On March 2, 1807, a Senate resolution called on Gallatin to report a plan for opening roads and canals at national expense. On April 4, 1808, he submitted a voluminous report recommending a system of roads to cost $16,000,000. No action was taken upon it. When Gallatin submitted his report, he must have been in doubt whether there was likely to be any surplus to devote to internal improvements for a considerable number of years. Conquering without war was proving to be expensive. On March 3, 1807, the last day of the closing session of the Ninth Congress, the old Federalist tax on salt was repealed.

CHAPTER XXX.

THE BERLIN DECREE AND THE ATTACK ON THE "CHESAPEAKE."

ALTHOUGH the operation of the Non-importation Act was suspended, on the recommendation of Jefferson, shortly after the meeting of the Ninth Congress for its last session, there were certainly reasons enough for its execution if refusing to buy certain articles of British produce was likely to produce any effect on England. The enforcement of the Rule of 1756 was but one of several outrages inflicted by England in 1805 and 1806, any one of which ought to have been intolerable. Since Pitt's return to power (1804), the practice of impressment had been enforced more vigorously than ever. Great Britain assumed that every seaman who could not prove that he was a native-born American was an English subject. In the words of Basil Hall, a young midshipman who served on the British frigate "Leander" in 1805, British officers impressed every American seaman "whom they had reason, or supposed or said they had reason, to consider" a British subject, "or whose country they guessed from dialect or appearance." Sometimes an American vessel would be all but stripped of her crew. Sometimes they impressed men whose dialect proved

Impressment.

that they were not British-born. An American dared not leave port without a certificate of citizenship describing his "eyes and nose and mouth and chin, the color of his hair and complexion, and the marks and scars about his person—like the advertisement of a runaway slave." * John Quincy Adams heard a British lieutenant threaten to take a native of Charlestown, Massachusetts, from an American vessel because the lieutenant chose to think that the person of the sailor did not accurately correspond with the description contained in his certificate of citizenship.†

* New England Federalism, 179.

† The following deposition of one Isaac Clark, a citizen of Massachusetts, sworn to before a justice of the peace, gives a vivid idea of the practical workings of impressment. "I had a protection [a certificate of citizenship] from the custom-house in Salem, which I showed to Captain Elliott; he swore that I was an Englishman, tore my protection to pieces before my eyes, and ordered me to go to work. I told him I did not belong to his flag, and I would do no work under it. He then ordered my legs to be put in irons, and the next morning ordered the master-at-arms to take me on deck and give me two dozen lashes; after receiving them he ordered him to keep me in irons, and give me one biscuit and one pint of water for twenty-four hours. After keeping me in this situation one week, I was brought on deck, and asked by Captain Elliott if I would go to my duty. On my refusing, he ordered me to strip, tied me up a second time, and gave me two dozen more, and kept me on the same allowance another week—then ordered me on deck again, and asked if I would go to work. I still persisted that I was an American, and that he had no right to command my services, and I would do no work on board his ship. He told me he would punish me until I was willing to work; and gave me the third two dozen lashes, ordered a very heavy chain put round my neck, fastened to a ring-bolt in the deck, and that no person except the master-at-arms should speak to me, or give me anything to eat or drink,

For a number of years after 1804 these impressments averaged about one thousand a year.* But this was far from completing the list of British outrages. Many of the harbors of the United States were blockaded by British frigates. Basil Hall, whose frigate, the "Leander," was one of the three which blockaded New York in 1805 and 1806, gave an account of their methods. "Every morning at daybreak," he said, "we set about arresting the progress of all the vessels we saw, firing off guns to the right and left to make every ship that was running in heave to, or wait until we had leisure to send a boat on board 'to see,' in our lingo, 'what she was made of.' I have frequently known a dozen and sometimes a couple of dozen ships lying a league or two off the port, losing their fair wind, their tide, and, worse than all, their market, for many hours, sometimes the whole day, before our search was completed."† This search was made not merely for British (?) sailors, but

British blockade of American ports.

but one biscuit and one pint of water, for twenty-four hours, until I would go to work. I was kept in this situation for nine weeks, when, being exhausted by hunger and thirst, I was obliged to yield."—The Olive Branch, 209, 210.

* The larger part of the sailors impressed were British-born. Gallatin calculated that American tonnage increased at the rate of about seventy thousand tons a year after 1803. Four thousand two hundred men were required to supply this yearly increase, of whom he estimated that twenty-five hundred were British. Many of these had deserted from the British service.—Works, I., 335.

† Basil Hall's Voyages and Travels in the United States, 114.

for any sort of evidence that might serve to justify the capture of the ship. To this end, private letters were opened without scruple, and on the flimsiest evidence vessels were captured and sent to Halifax for trial, to be detained for months at great expense and with great injury to their cargoes, even when they were fortunate enough to escape confiscation. The brutal recklessness of these British frigates received a terrible illustration in 1806. In April of that year, the "Leander" fired a shot to stop a vessel without taking the trouble to note that a coasting sloop was in range. The shot struck the sloop captain's brother, John Pierce by name, and killed him instantly. Certainly, if refusing to buy British produce would take the place of war, no one could deny that the time for such refusal had come.

Napoleon did not allow himself to be outdone by England in attacks upon the rights of the United States. On July 31, 1806, shortly after he had refused to keep his promise to the United States relative to the Floridas, Talleyrand, under his direction, wrote a despatch to the French minister at Washington. The despatch aimed to suggest to Turreau a line of conduct which would tend to prevent Jefferson from taking sides with England "Take care, sir," ran the despatch, "to maintain the United States in the views of conciliation with which the events of the last campaign may have inspired them." The events of the last campaign had enabled Napoleon to take long strides towards the mastery of continental

Europe. Turreau was to make the American government understand that it was not safe for the United States to become the enemy of Napoleon.

Napoleon was playing a bold game. Through the promise of the Floridas, he had induced the United States to pass the Non-importation Act. But when the despatch was written that act had not yet gone into effect, and it was doubtful if it ever would. Our ministers to England, William Pinkney and James Monroe (Pinkney had been associated with Monroe since May) were endeavoring to negotiate a treaty, and they were in a fair way to succeed. A treaty with England in 1806 would have made the United States and France enemies, as Jay's treaty had in 1794. Early in 1807, when Americans were expecting the arrival of a treaty with England, the news of Napoleon's Berlin Decree reached the United States. That extraordinary decree, issued November 21, 1806, declared the British Islands in a state of blockade; prohibited all trade with them; made every British subject in countries occupied by the troops of France or her allies liable to capture as a prisoner of war; made prize of war of all merchandise or property belonging to Englishmen; and declared that no ship which had touched at an English port should be admitted into the ports of France or of those of countries in alliance with her.*

The Berlin Decree.

That decree reached England when Monroe and

* Lyman's Diplomacy in the United States, I., 407.

Pinkney were on the point of signing a treaty. In negotiating it, the American ministers had violated their instructions, by which they were directed to make no treaty in which the assumed right of impressment was not formally abandoned; which did not restore trade with enemies' colonies to the foundation on which it rested before Sir William Scott's recent decisions; and which did not provide for indemnities for the spoliation of American commerce in 1805.*

The treaty negotiated by Monroe and Pinkney.

The proposed treaty satisfied none of these conditions. As to impressment, the English commissioners declared that at such a critical period in the history of the country no English minister would dare make a treaty in which that right was abandoned. But perhaps the most remarkable article in the treaty related to the colonial trade. It provided that European merchandise might be freely carried from the United States to the port of any colony, not blockaded, belonging to the enemies of England, on condition that such merchandise had been previously landed in the United States; that it had paid the ordinary duties on similar articles so imported for home consumption; that upon re-exportation it and the vessel conveying it were in good faith the property of American citizens; and that after the drawback it should remain subject to a duty equivalent to not less than one per cent ad valorem. In

* State Papers, III., 119, 124.

like manner, all other articles, excepting contraband, which were the growth and produce of enemies' colonies might be re-exported on condition that they had paid to the United States a duty of not less than two per cent ad valorem.*

Following the example of Jay, Monroe and Pinkney finally decided to sign the treaty, having been assured in a diplomatic memorandum that the British naval officers had received special instructions to exercise the utmost caution in impressing British seamen on American ships.†

But when the Berlin Decree reached England, the English commissioners hesitated. Next to Great Britain the United States was the greatest commercial power in the world. If this country should submit to the Berlin Decree, nearly all of the British merchandise which American ships had been carrying to the continent of Europe would remain in England unsold. The submission of neutral nations—of which the United States was the chief—might compel England either to submit to Napoleon or retaliate. She could not resist him without resources, and if her markets were taken from her, these would be destroyed. But to retaliate upon Napoleon, to prevent neutral ships from trading with France or her allies, would be to imitate him in his arbitrary and illegal interference with neutral commerce.

Hesitation of the English commissioners on account of the Berlin Decree.

* State Papers, III., 140. † Ibid., 14.

The English commissioners finally decided to sign the treaty. But they appended a protest against the Berlin Decree, which reserved to England the right of retaliation in case neutral nations submitted—the right of making blank paper of the treaty unless the United States, before the treaty with its ratification by the American government should be returned to England, should give, either in words or deeds, security to England that this country would not submit to the enforcement of the Berlin Decree, against American commerce.*

They sign the treaty, but protest against the Berlin Decree.

That "self-preservation is the first law of nature" is as true of nations as of individuals, and Great Britain was fighting for her life. Although a large part of the continent of Europe was at the feet of Napoleon, Great Britain's navy enabled her to hold him at bay. The annihilation of the fleets of France and Spain at the battle of Trafalgar (October 21, 1805) had made the invasion of England impossible. Foiled in his attempt to reach his enemy, Napoleon determined to starve him into submission by cutting off the resources upon which his strength depended. If England could only defend herself against this new attack by retaliation, retaliation was justifiable. If the choice lay between retaliation and destruction, it would have been absurd for her to allow herself to be so entangled in the meshes of international law as to yield to Napoleon without a struggle.

* State Papers, III., 152.

But England did not even claim the right to retaliate at the expense of neutral nations unless, by submitting to the Berlin Decree, they should allow themselves to become parties to the plan of Napoleon. In the protest against the decree which the English commissioners appended to the treaty, they declared (December 31, 1806) that "his Majesty might probably be compelled, however reluctantly, to retaliate in his just defence, if neutral nations, contrary to all expectations, should acquiesce in such usurpations." Here retaliation was put upon its proper ground—the failure of neutral nations to defend themselves against the usurpations of Napoleon. In spite of this explicit statement, Great Britain did not wait to see what the United States would do. On January 7, 1807, only a week later, and months before England learned or could learn what the United States intended to do, an Order in Council was issued based on England's right to retaliate. It prohibited all neutral trade between two ports, both of which were in possession of France or any of her allies, on the ground that the King of England felt "himself bound" "to retort upon them [his enemies] the evils of their own injustice."* This was a terrible blow at the commerce of the United States. It compelled American vessels to dispose of their entire cargo in a single city, and buy a return cargo there or return without any. Still worse, it compelled them to

The January (1807) Order in Council.

* State Papers, III., 5.

dispose of their cargo in the first port in which they anchored, and so to take whatever they could get for it.

Bad as this was, it was by no means the worst thing in connection with the new order. The order declared that the Berlin Decree gave "his Majesty . . . an unquestionable right" to enforce "the same prohibition of all commerce with France which that power vainly hoped to effect against the commerce of his Majesty's subjects." The King of England refrained from prohibiting all commerce with France and her allies, only through that forbearance and moderation which "had at all times distinguished his conduct." * Americans had reason to suppose that the commerce still left them was hanging by a frail thread when it depended upon the generosity of England.

On his own responsibility Jefferson rejected the treaty negotiated by Pinkney and Monroe. It not only did not provide for the abandonment of impressment, but it proposed to take from the United States what Jefferson regarded as his keenest weapon against England. It provided that no restrictions should be imposed on the commerce of England which did not extend to all other nations. Jefferson therefore refused to submit it to the Senate. He did not feel as Washington felt in 1794, that the alternative of a treaty of which he did not approve was war. If it was necessary to resort to hostile meas-

Jefferson rejects the treaty.

* Erskine to Madison. State Papers, III., 158.

ures, he believed that commercial restrictions would bring Great Britain to terms.

Although Great Britain claimed and exercised the right to impress British sailors on American merchant-vessels, she did not claim the right to search the national vessels of the United States. American national vessels, she admitted, represented the sovereignty of the nation. To search them against the will of their commander was equivalent to a hostile invasion of the territory of the United States. But the disregard of England for the rights of the United States was steadily increasing. In 1804, thirty-nine American vessels had been captured by the British; in 1805, one hundred and sixteen; and in 1807, one hundred and ninety-four. These numbers are fair indices of the rising spirit of British aggression. The battle of Trafalgar, in 1805, had made England mistress of the ocean, and she showed a constantly increasing disposition to assert her supremacy by making her will the measure of the naval rights of neutrals. Accordingly, Berkeley, the admiral in command of the British ships on the North American station, issued an order in June, 1807, commanding the captains of the frigates under his command to search the American frigate "Chesapeake" for deserters from certain frigates when they met her outside the limits of the United States. In obedience to this command, the British frigate "Leopard" hailed the "Chesapeake" June 22, 1807.

Rising spirit of British aggression.

The captain of the "Leopard" sent an officer to the "Chesapeake" with a note announcing that, in accordance with the command of Admiral Berkeley (which he enclosed), he was about to search the "Chesapeake" for deserters. The captain of the "Chesapeake," Commodore Barron, replied that no such men as those described in Admiral Berkeley's order were on board, and that no officers but his own should muster his crew. The "Leopard," after firing a couple of shots across the bow of the "Chesapeake," replied with a broadside of solid shot at the American frigate, which was not more than two hundred feet away.

The "Leopard" attacks the "Chesapeake."

The action of the "Leopard" took the "Chesapeake" by surprise. Her guns were not ready for action. Some of them were not even on their carriages. The matches were not in their places; the loggerheads were cold. A crowd of men and boys around the magazine were clamoring for matches and loggerheads, while broadside after broadside was poured into the helpless frigate. Unable to make any resistance, the "Chesapeake" hauled down her flag after three of her men had been killed and eighteen wounded. The only gun fired by the American during the action was by means of a live coal brought from the cook's galley. When the "Chesapeake" struck her flag, several British officers were sent on board, who mustered the crew of the ship. Four men were taken to the "Leopard," three of whom were native American citizens who had deserted from a Brit-

ish frigate upon which they had been compelled to serve.

The news of this insult to the nation sent a thrill of indignation throughout the country. "But one feeling pervades the nation," wrote Joseph Nicholson to Gallatin, July 14; "all distinctions of Federalism and Democracy are vanished. . . . I trust in God the 'Revenge' is going out to bring Monroe and Pinkney home."* Almost every town and city in the United States passed resolutions denouncing the attack on the "Chesapeake" as a wanton and dastardly outrage. Even the Federalists of Boston, after a few days of hesitation, resolved (July 16) that the unprovoked attack on the "Chesapeake" was a "wanton outrage," "a direct violation of our national honor," and an "infringement of our national rights and sovereignty."

True to his policy of peace, even this insult did not make Jefferson think of war. On July 2, he issued a proclamation requiring all British armed vessels within American waters to leave, and forbidding all others to enter unless driven in by an enemy or rough weather.† "This," he said, "will leave Congress free to decide whether war is the most efficacious mode of redress in our case, or whether we might not teach Europe that there are peaceable means of repressing injustice by making it the interest of the aggressor to do what is just."‡ On July 6,

Jefferson's proclamation.

* Adams' Gallatin, 360. ‡ Works, V., 114.
† State Papers, III., 23, 24.

instructions were sent to Monroe to demand reparation for the attack on the "Chesapeake." "A formal disavowal of the deed," he was told, and "restoration of the four seamen to the ships from which they were taken are matters of course and indispensable. As a security for the future, an entire abolition of impressments from vessels under the flag of the United States is also to make an indispensable part of the satisfaction." *

Instructions to Monroe in regard to the "Chesapeake."

One cannot but wonder that the American government thought it wise to insist upon the abandonment of impressment as a part of the satisfaction for the attack upon a national vessel. A British frigate, obeying the orders of a British admiral, had fired upon an American frigate, killed and wounded a number of her men, and taken four of them prisoners. Was the act the British admiral's or was it the act of the British government? If it was the act of the British government, England had made war upon us, and we had no choice but to go to war or submit; if it was the act of the British admiral, there was but one thing for England to do if she meant to act honorably: restore matters to the condition in which they stood prior to the high-handed and outrageous conduct of her agent as far as that was possible. She could not bring back to life the men who had been shot down on the decks of the "Chesapeake," but she could restore to their vessel the

* State Papers, III., 184.

men she had taken from it. The honor and dignity of the nation imperatively required that this should be done instantly, without haggling, parley, or hesitation, as soon as the facts were ascertained. To tell the Tory ministry which then governed England that we would accept no atonement that did not include the abolition of impressments was to give it an excuse for refusing to make any satisfaction to a government which it despised as the representative of a nation of democrats. One thing only could have justified the instructions to Monroe: the determination on the part of the American government to go to war unless England conceded to a Democratic administration what she had steadfastly refused to the administrations of Washington and Adams. Unless that determination had been reached, the instructions to Monroe put the government in a position in which it might have to "truck and higgle" for the national honor, as though it were a thing which could be put up at auction and sold to the highest bidder for cash!

Without waiting to hear from the United States, the British government promptly disavowed the attack upon the "Chesapeake." A month or two later (October 16), the King of England issued a proclamation which ought to have enabled the American government to see the disavowal in its proper light. On the alleged ground "that great numbers of mariners and seafaring men, our natural-born subjects, have been enticed to enter into the service of

The British impressment proclamation.

foreign states," and were actually serving in their national ships as well as in their merchant-vessels, the proclamation was issued ordering such seamen to return home. It ordered British naval officers to take those who might be found upon merchant-vessels, and to require the commanders of foreign national vessels to give up British subjects, and, in case of refusal, to transmit "information of such refusal" to the proper authorities, in order that the British government might be furnished with the proper evidence upon which to demand redress of the offending nation for the detention of its subjects. It also gave warning that naturalization could not divest British subjects of their allegiance or relieve them of their duty.*

This proclamation may be regarded as a sort of foot-note to the disavowal of Admiral Berkeley. The mistake, then, which Berkeley had made was in taking the law into his own hands. Hereafter, the British government, with the British navy behind it, would demand redress of such states as permitted British subjects to serve in their national vessels.

The mission of George Rose put the matter in a still clearer light. When Monroe, in obedience to his instructions, insisted that Great Britain should abandon the right of impressment as part of the reparation for the "Chesapeake" outrage, the British Foreign Secretary, George Canning, replied

The mission of George Rose.

* State Papers, III., 23.

with an insulting sneer. In acknowledging the independence of the United States, he said, "Great Britain had not abdicated her rights as a naval power, unless it could be shown that there were express stipulations by which the ancient and prescriptive usages of Great Britain, founded in the soundest principles of natural law, though still enforced against other independent nations of the world, were to be suspended whenever they might come in contact with the interests of the American people."* Since Monroe's instructions would not permit him to consider the case of the "Chesapeake" apart from the general subject of impressment, Canning said he would send a special minister to Washington. Accordingly George Rose was sent on a special mission to the United States for the ostensible purpose of offering reparation for the "Chesapeake" outrage.

He began his career of insult before he landed. He knew that Jefferson's proclamation of the preceding July expressly excepted armed vessels bearing public ministers. But he chose to forget it, and waited two weeks in his frigate in Hampton Roads until special permission to land was sent him. From the nature of his instructions it would be difficult to suppose that the United States was the aggrieved party. He was not to begin negotiations until the United States had recalled Jefferson's meek proclamation. When this was done he was in-

* State Papers, III., 199.

structed to say that Admiral Berkeley had been recalled;* that the Americans taken from the "Chesapeake" would be discharged; and that suitable provision would be made for the widows and orphans of the men who had been killed. But in order that this reparation—the discharge of the American sailors, and provision for the widows and children of the men murdered on the "Chesapeake"—might be made, the United States must make certain concessions. The American government must formally disavow Commodore Barron's conduct in encouraging desertion, keeping deserters in his ship, and denying that they were there. (Three of the men taken by the "Leopard," it will be remembered, were native-born Americans who had deserted from a British ship on which they had been impressed.) If the United States government would thus punish the commander of the "Chesapeake" for not obeying the command of the captain of the "Leopard," and if it would "solemnly" express certain other disavowals, his Majesty would have a satisfactory pledge that the recurrence of similar causes would not make it necessary for the British government to authorize such attacks as Berkeley had ordered without authority. In other words, if Commodore Barron should be punished, and the British government, in effect, assured that the American government would punish other naval officers

* He was recalled in order to be promoted!

for similar conduct, *then, and then only*, would reparation be made for the attack on the "Chesapeake," and satisfactory assurance be given to the United states that similar attacks would not be made in future!* That was the apology which the British minister came to make for the unprovoked attack of a British frigate on a national vessel of the United States!

How Rose obeyed his instructions; how, on his first interview with Madison, he said that nothing could be done till the proclamation was recalled; how Jefferson and Madison, through Robert Smith, the Secretary of the Navy, begged him to do something without obliging the President to seem to disregard the national honor and without compromising his popularity; how the President offered to recall the proclamation if Rose would make an informal disclosure of the "reparation" he was authorized to make; how Rose agreed to it provided the proclamation should be recalled in terms such as he himself agreed to; how this condition was accepted, and a proclamation of recall was offered to Rose and accepted; and how at last the American government learned what kind of "apology" it had begged for on its knees from the British minister—all this is a shameful story. But it was part of the price of the policy of peace. Better a hundred times that some thousands of Americans had gone to their graves a little earlier than that the nation should have been degraded by begging for an apology which

* MSS. British Archives.

was a keener insult than the outrage for which it was to be offered.*

* This humiliating story can be read without abridgment only in the manuscript archives of the British government—the despatches from Rose to Canning in January, February, and March, 1808. But copious extracts from Rose's correspondence may be found in Henry Adams' History, IV., 178-199.

CHAPTER XXXI.

THE ORDERS IN COUNCIL AND THE MILAN DECREE.

IN so far as the Berlin Decree violated the general principles of international law, it was almost a dead letter. At the time it was issued, France had hardly so much as a frigate at sea. When, therefore, Napoleon decreed the British Islands in a state of blockade, and prohibited all commerce with them, the significance of his decree lay chiefly in the readiness which he showed to imitate England in her violation of international law. In forbidding all trade in English merchandise, and in declaring that no vessel coming directly from England or English colonies should be admitted into any French port, the Berlin Decree grossly violated the treaty of 1800 between the United States and France, but it violated no general principle of international law. Any state has the right to forbid any foreign commerce whatever to be brought into its ports. When, therefore, the news of the Berlin Decree reached the United States, the vital question was not, would Napoleon enforce the blockade of the British Islands in violation of international law? but, would he, in violation of the treaty of 1800, prohibit American trade in English mer-

The Berlin Decree and international law.

chandise, and capture American ships in French ports coming from England?

For nearly nine months it appeared that he intended to respect his treaty with the United States. But about the 1st of September, an American ship, the "Horizon," was condemned for having violated the Berlin Decree, and on September 18 the French Grand Judge, Regnier, officially announced that the Berlin Decree would be enforced without any exception.* The meaning of it was plainly stated in a letter from Champagny, who had succeeded Talleyrand as the French Minister of Foreign Affairs, to Armstrong. "All the difficulties," he said, "which have given rise to your reclamations, sir, would be removed with ease if the government of the United States, after complaining in vain of the injustice and violations of England, took with the whole Continent the part of guaranteeing itself therefrom." †

The Berlin Decree enforced.

Champagny meant to tell Armstrong that Napoleon wished the United States to take part in his "Continental System" for breaking down England. This Continental System, of which the Berlin Decree was a part, was a vast plan which Napoleon matured in 1806 and 1807 for conquering England by destroying her commerce. The "wet ditch," as he had contemptuously called the English

Napoleon's Continental System.

* State Papers, III., 244.

† Ibid., 248. November 24, 1807.

Channel, had proved an impassable barrier to his armies. When in 1805 the combined fleets of France and Spain were beaten into fragments by the English fleet under Lord Nelson off the coast of Trafalgar, Napoleon was obliged to abandon the plan of conquering England by invasion. But the determination to conquer her was as strong as ever. Since he could not reach his enemy in the open field, he was obliged to change his tactics. The strength of England lay in her commerce. If he could cut off her commerce, this Samson of the sea would become as weak as a child. To this end, he resolved to build a wall around the continent of Europe so far as English commerce was concerned. He resolved that the produce of England which had been finding an outlet on the continent of Europe should rot in English granaries and English warehouses.

The Berlin Decree was issued a few weeks after Napoleon had overwhelmed the Prussians at the battle of Jena. But powerful as he was, there were obstacles in the way of the complete effectiveness which he wished to give to the Continental System. He was emperor of France, which extended from the Scheldt to the Pyrenees. He was king of Italy from the Alps to the Tiber. He was protector of the Rhenish Confederation, which extended from the Rhine to the Vistula. One of his brothers was king of Holland, and another of Naples. He had overwhelmed Austria at Ulm and Austerlitz, and Prussia at Jena. But Russia was still

unconquered. Until he could bend Russia to his will, his Continental System would lack that completeness which was necessary, as he thought, to give it the greatest effectiveness against England. The battle of Friedland made the Czar of Russia willing to talk of peace. The celebrated treaty of Tilsit (July 7, 1807) dismembered Prussia, and made her in effect a mere province of France; created the kingdom of Westphalia out of certain provinces of Prussia; and, most important of all, united France and Russia in the closest alliance. The Czar agreed to act as mediator with England, and to go to war with her in case his mediation was refused.

Then, at last, Napoleon felt himself ready to bring the full power of his Continental System to bear upon his hated enemy. Except Denmark and Portugal, every state on the continent of Europe obeyed his will. Twelve days after the peace of Tilsit, he ordered the King of Portugal to close his ports against English commerce by September 1. Early in August, the Crown Prince of Denmark was warned that he must choose between war with England and war with France. On August 3, Armstrong wrote to Madison giving unmistakable signs of the storm that was coming: "Yesterday we had our first audience of the Emperor since his return to Paris. Happening to stand near the minister of Denmark, I overheard his Majesty say to that minister, 'So, M. le Baron, the Baltic has been violated.' The minister's answer was not audible to me, nor did it

No more neutrals.

appear to have been satisfactory to the Emperor, who repeated, in a tone of voice somewhat raised and peremptory, 'But, sir, the Baltic has been violated.' From Mr. Deyer he passed to myself and others, and lastly to the ambassador of Portugal, to whom, it is said, he read a very severe lecture on the conduct of his court. These circumstances go far to justify the whispers that begin to circulate, that an army is organizing to the south for the purpose of taking possession of Portugal, and another to the north for a similar purpose with regard to Denmark; and, generally, that having settled the business of belligerents, with the exception of England, very much to his own liking, he is now on the point of settling that of neutrals in the same way. It was, perhaps, under the influence of this suggestion that Mr. Deyer, taking me aside, inquired whether any application had been made to me with regard to the *projected union* of all the commercial states against Great Britain, and on my answering in the negative, he replied, 'You are much favored, but it will not last.'"* In a diplomatic audience at Fontainebleau, October 14, Armstrong heard Napoleon declare that henceforth his will was to be the law of the world. "The House of Braganza shall reign no more," he said to the Portuguese minister. Then turning to the minister of the Queen of Etruria, he said: "Your mistress has her secret attachments to Great Britain, as you, Messieurs Deputies of the Hanse Towns, are also

* State Papers, III., 243.

said to have; but I will put an end to this—Great Britain shall be destroyed. I have the means of doing it, and they shall be employed. I have three hundred thousand men devoted to this object, and an ally who has three hundred thousand to support them. I will permit no nation to receive a minister from Great Britain until she shall have renounced her maritime usages and tyranny; and I desire you, gentlemen, to convey this determination to your respective sovereigns." * In a word, there were to be no more neutrals. Napoleon meant to confiscate every American ship that violated his Berlin Decree.

Upon this as a pretext, England issued an Order in Council which struck at the roots of the sovereignty of the United States. The attack upon the commerce of this country made by the order issued January 7, 1807, was not sweeping enough to satisfy the Tory ministry which went into office in April, 1807. Spencer Perceval, the Tory Chancellor of the Exchequer, had set forth his ideas of English policy in criticising the January order. "You might turn the provisions of the French decree against themselves," he had said, "and as they have said that no British goods should sail freely on the seas, you might say that no goods should be carried to France except they first touched at an English port. They might be forced to be entered at the custom-house, and a custom entry imposed, which would contribute to advance the price and give a better sale in the

* Armstrong to Madison, October 15, 1807.

foreign market to your own commodities." * A few months after the government passed into the hands of the Tories, Perceval's ideas began to assume a tangible form. Thirty-two years after the American colonies went to war with England sooner than submit to have taxes imposed on them without their consent, twenty-four years after their independence was acknowledged, England issued an Order in Council which could only be defended on the ground that the United States was not a nation, that it was only a province of England. On November 11, 1807, England in effect repudiated the treaty of 1783. The Order in Council of that date prohibited all neutral trade with France or her allies unless it passed through British ports. (As the United States was then the only commercial nation in a state of neutrality, the order affected, and was intended to affect, this country alone.) By paying duties to Great Britain, and by the payment of certain additional fees, American vessels would be permitted to carry to Europe the colonial produce of the enemies of France. They were graciously exempted from the necessity of paying any duty on flour, meal, and all grains, tobacco, and other articles which were the product of the soil of America, with the exception of cotton, although required to take these articles to the continent of Europe through a British port.† On one

The English Order of November, 1807.

* Cobbett's Debates, VIII., 632.

† State Papers, III., 30, 31, 209, 210.

point the British ministry showed a surprising readiness to modify their order. When (February 22, 1808) Pinkney remonstrated against the duty imposed on cotton, Canning gravely replied that since it was the wish of his government to consult the feelings as well as the interests of Americans as far as practicable, the exportation of American cotton to Europe would be entirely prohibited. *

The object of the order was clearly stated in a letter from Perceval (December 1, 1807) to the Speaker of the House of Commons. "The short principle," he said, "is that trade from a British port or with a British destination is to be protected as much as possible." † The British minister at Washington frankly avowed the same thing. "The object of these regulations," said Erskine, "will be the establishment of such a protecting duty as shall prevent the enemy from obtaining the produce of his own colonies at a cheaper rate than that of the colonies of Great Britain." As though to make this less offensive, Erskine added that America could indemnify herself at the expense of the foreign consumer for the advance of this duty. ‡ In truth the object of this order was the same as had guided the policy of England towards the United States since 1804. The decision of the Court of Admiralty in 1805, the blockade of the

* State Papers, III., 207, 209.

† Diary and Correspondence of Lord Colchester, II., 434.

‡ State Papers, III., 210.

coast from the Elbe to Brest in 1806, the Order in Council of January 7, as well as that of November 11, 1807, all had as their primary object the protection of British trade, and that, too, against the United States. The British President of the Board of Trade, in criticising the order, November 5, before it was decided on, said: "The object of the proposed order, though general, is in fact nothing but the colonial trade carried on through America."

This, then, was their object: to build up the commerce of England at the expense of the United States. To accomplish this object the Order in Council substituted the will of the Tory ministry of England for the principles of international law. The trade to the British dominions, to Sweden, Africa, and Asia, and with the colonies of France, Spain, and Holland, was still left open. But even this fragment of commerce was conceded, not as a matter of right, but as a special indulgence from the King of England. A crisis in American history had come. If Jefferson had any substitute for war, the time to test its efficacy could not be postponed if the United States meant to maintain its independence as a nation.

Why was it that the government of the most liberal nation in Europe, whose liberties were the result of struggles prolonged through many centuries, interfered with the rights of the United States in this brutal and high-handed way? The answer has in part already been

Explanation of England's conduct.

intimated: in order to put money into the pockets of Englishmen. The commerce of England was the commerce of Englishmen; the spoliation of neutral commerce for the sake of English commerce was for the sake of the commerce of Englishmen. And however the British government may have excused its international highway robbery on the plea that in a struggle with such a robber as Napoleon it dared not be overscrupulous, it must fight him with his own weapons, a motive of great influence with the aristocratic gentlemen who then governed England was the determination to take money out of the pockets of the people to whom it belonged and put it into the pockets of Englishmen.

Their lack of respect for the nation which they were plundering doubtless contributed to this determination. On October 18, 1807, Lord Colchester wrote a letter that presents a clear light in which to study the policy of the British government in relation to the United States. "It is in vain," he wrote, "to speculate upon the result when we have to bear [!] with a country [America] in which there is little authority in the rulers, and as little public spirit and virtue in the people." *English frigates had blockaded our ports, carelessly killed an American in our own harbors, confiscated our ships because they were engaged in a trade which her own courts had pronounced legal, impressed our seamen, and finally attacked our national vessel, killing and wounding a

* Diary and Correspondence of Lord Colchester, II., 434.

number of her men and taking four of them prisoners. To all these outrages, any one of which would have provoked England to a declaration of war, we had replied by refusing to buy British woollens, and by denying to British ships of war the hospitality of our harbors. And yet the British government had to bear with us! In truth all the old-world contempt for the "lower orders," for "persons in trade," all its intense feeling that the aristocratic and leisured few with or without culture are the end and object of creation, that the many have no reason for existence except to serve them, all its intense hatred of a democracy, were represented in the Tory government of England. About the middle of the eighteenth century, a French nobleman, it will be remembered, felt aggrieved because Louis XV. rebuked him for indulging in the pastime of shooting peasants. What were peasants for if not to be shot when it amused a nobleman to shoot them? All that there was of a kindred feeling in England was represented in the government which went into office in 1807. How insolent on the part of a government of democrats to object to anything which England chose to do! What condescension on the part of a power which represented the élite of the world to submit to that government's protests, however feeble! George Rose, who came to this country on a mission which for cool effrontery is without a parallel in the history of American diplomacy,—a mission which set at naught all the considerations of reason and right

in the interests of brute force,—took occasion in one of his despatches to Canning, the British Foreign Secretary, to say that Congress contained one tailor, one weaver, six or seven tavern-keepers, four notorious swindlers, one butcher, one grazier, one curer of hams, and several schoolmasters and Baptist preachers. How could anything respectable emanate from a body so conspicuously deficient in the qualities that constitute the sole claim to consideration?

The Milan Decree.

On December 17, Napoleon issued from Milan his retaliatory decree. "Observing," began the preamble, "the measures adopted by the British government on the 11th of November last, . . . observing that by these acts the British government denationalizes ships of every nation of Europe," Napoleon decreed that every ship which should have been searched by an English vessel, or should have paid any tax to the British government, or should sail from or proceed to any port in the possession of England in any part of the world, should be "good and lawful prize," and that this decree should be rigorously enforced until England should have returned to the principles of the law of nations, "which are also the principles of justice and honor."*

Armstrong remonstrated. He told Napoleon's minister that England and France had violated the rights of the United States in defiance of the principles of interna-

* State Papers, III., 290.

tional law. But with Great Britain he said the United States had no treaty providing rights in addition to those supposed to be guaranteed by the principles of international law. "Such was not their situation with France. With her a treaty did exist, . . . a treaty sanctioned with the name and guaranteed by the promise of the Emperor that all its obligations should be inviolably preserved." The reply which Napoleon directed his minister to make is suggestive. "You must write to the American minister," he wrote to Champagny, February 11, 1808, "that his Majesty treated with America independent and not with America enslaved; that if she submits to the King of England's decree of November 11, she renounces thereby the protection of her flag; but that if the Americans, as his Majesty cannot doubt without wounding their honor, regard this act as one of hostility, the Emperor is ready to do justice in every respect."*

Napoleon's reply to Armstrong had but one vulnerable point: he had not waited to see whether America would submit to the British order before issuing his Milan Decree. The only question which Napoleon had to answer in order to determine the justice of his Milan Decree was, would America submit? A vessel which paid a duty to the British government was certainly "denationalized." No matter what flag hung at the masthead, the vessel was to all intents and purposes a

* Correspondence of Napoleon, XVI., 377.

British vessel, and if the American government acquiesced in the British order, the United States was in effect a British province.

But in retaliating against England without consulting the United States, it must be admitted that Napoleon violated our rights in a merely technical sense. Why should a man who dealt with facts as he found them go through the form of waiting to see whether the United States would resist the British November order? A nation which had submitted to the robberies of Spain and England and the insults of France in 1805, to Fox's paper blockade in 1806, to the Order in Council in January, 1807, to an attack upon a national vessel five months later, and to the yearly impressment of hundreds of its citizens, was not likely to be goaded into war by one more insult, although the most outrageous in a long list.

CHAPTER XXXII.

THE EMBARGO.

THE Tenth Congress met at the call of the President October 26, 1807. Of the thirty-four senators, but five were Federalists, and in the House more than one hundred and ten members were Republicans. Macon was set aside as Speaker, Joseph Varnum of Massachusetts being elected in his stead. George Washington Campbell of Tennessee was given Randolph's old place as chairman of the Committee of Ways and Means. Evidently the huge Republican majority meant to follow the advice of Jefferson with even less question than Congress had done heretofore. This tremendous majority did not, however, fully represent the power of the Republicans in the country at large. Two of the five Federalist senators were from Massachusetts, but that state in the preceding spring election had elected a Republican governor. Connecticut alone of all the New England states remained Federalist.

Republican majority in the Tenth Congress and in the country.

The most significant statement in the annual message related to the federal judiciary. Jefferson had been very desirous of the conviction of Aaron Burr in his trial for treason, which had taken place during the current year, and had more than hinted that if he was not convicted,

Jefferson's reference to the judiciary in his annual message.

it would be because of the bias in his favor of the court over which John Marshall presided. "If their [the Supreme Court's] protection of Burr produces this amendment [an amendment which would destroy the independence of the judiciary], it will do more good than his condemnation would have done." *

In a pointed paragraph in the annual message, the President told Congress that he thought it his duty to submit the proceedings and the evidence publicly exhibited in the arraignment of Burr, that Congress might judge whether the defect was in the law or the testimony "or in the administration of the law, and that it might apply or originate the remedy."

Gallatin's annual report.

A difference of opinion between the President and the ablest member of his cabinet, Albert Gallatin, seemed to be manifest when (November 5) the Secretary of the Treasury submitted his report. Although Jefferson's foreign policy could not be ascertained from a study of the message, no one could suppose that it contemplated war. But the Secretary of the Treasury seemed bent on showing that the finances of the country were in such condition as to make war perfectly safe. He told Congress that there was a balance of seven or eight millions in the treasury, and that war could be carried on for a year without an increase of debt and without resort to taxation; and that after the first year its expenses could be met by loans,

* Works (Washington's Edition), V., 65. Letter to W. B. Giles, April 20, 1807.

founded on an increase of customs duties,—no resort to internal taxation being necessary. "An addition to the debt is doubtless an evil," Gallatin admitted; "but experience having now shown with what rapid progress the revenue of the Union increases in time of peace, with what facility the debt formerly contracted has in a few years been reduced, a hope may confidently be entertained that all the evils of the war will be temporary and easily repaired." What was this but an admission that the principle which lay at the foundation of his financial policy—that the speedy payment of the public debt was of such overriding importance that everything, the efficiency of the army, the increase of the navy, should be made subordinate to it—was false? If the defence of our rights in 1807 justified an increase in the national debt, how could a reduction of it in 1801 have been of such paramount importance? If a resort to war in 1807 was preferable to the submission to endless insults and outrages, was it wise in 1801 to invite such international highway robbers as England and Napoleon to subject us to them by reducing our means of defence for the sake of a little more rapid reduction of the nation's debt? In truth Gallatin knew that he had blundered; fortunate would it have been for the country if he could have convinced the President of the same fact.

Gallatin's consistency.

The Non-importation Act, which had been passed in April, 1806, and suspended in December of that year,

went into effect December 14,—a day or two after Armstrong's despatches announcing the enforcement of the Berlin Decree, and English newspapers predicting a more sweeping attack upon American commerce, reached the United States. On December 16, Jefferson received a copy of the British impressment proclamation. He immediately called a meeting of his cabinet and submitted the first draft of a message to Congress, recommending an embargo on the ground of the Orders in Council predicted by English newspapers, and of the British impressment proclamation, as well as of the enforcement of the Berlin Decree. But as the Order in Council was not officially known, Madison submitted another draft—omitting all direct mention of the expected British decree—which was adopted and sent to Congress December 18.*

The embargo message.

"The communications now made"—the letter of the French Grand Judge Regnier and the British impressment proclamation—said the message, "showing the great and increasing danger with which our merchandise, our vessels, and our seamen are threatened on the high seas and elsewhere by the high powers of Europe, and it being of the greatest importance to keep in safety these essential resources, I deem it my duty to recommend the subject to the consideration of Congress, who will doubtless perceive all the advantages that may be expected from

*Jefferson's Works (Washington's Edition), V., 217; VII., 378.

an immediate inhibition of the departure of our vessels from the ports of the United States." *

It is hardly necessary to say that these were not the decisive reasons with Jefferson. The impressment proclamation certainly foreshadowed increased activity in dragging American sailors out of American ships and compelling them to fight the battles of Great Britain. The letter of Regnier left no doubt that trade in English merchandise with any port on the continent of Europe would expose American vessels to great danger. But it was not to save American sailors and American ships that Jefferson recommended the embargo. He believed that he could compel the tyrant of the seas, whom Napoleon had so far been unable to conquer, to respect the rights of the United States without firing a single gun. As Napoleon was trying to starve Great Britain into submission by building a wall around the continent of Europe against English commerce, so Jefferson expected to make the British government respect the rights of the United States by building a wall around the United States against the commerce of the rest of the world. What influence he hoped to exert on the despot who was making his will the law for the continent of Europe it would be impossible to say.

Gallatin had no faith in the coercive power of commercial restrictions. Before the embargo message was sent to Congress, he wrote to Jefferson suggesting impor-

* State Papers, III., 25.

tant changes in the draft which had been agreed upon at the cabinet meeting. "I also think," he wrote, "that an embargo for a limited time will at this moment be preferable in itself and less objectionable in Congress. In every point of view—privations, sufferings, revenue, effect on the enemy, politics at home, etc.—I prefer war to a permanent embargo. Government prohibitions do always more mischief than had been calculated. . . . As to the hope that it may have an effect on the negotiation with Mr. Rose, or induce England to treat us better, I think it entirely groundless."*

Gallatin's letter to Jefferson in relation to the embargo message.

Jefferson showed his respect for the Secretary of the Treasury by immediately calling a meeting of the cabinet to consider Gallatin's suggestion. It was only a matter of form. No amount of argument could have dislodged from his mind an idea which for so many years had entered into the warp and woof of all his thinking on matters of statecraft. The discussions of the cabinet, it is needless to say, produced no change in the message.

A bill in accordance with Jefferson's recommendations was immediately introduced, laying an embargo without limit as to time; and after a three days' debate in secret session, it passed both Houses and became a law December 22.† But as

Embargo passed.

* Gallatin's Writings, I., 368.

† Annals of Congress, 1807-8, 2815

this law laid an embargo only on all registered or sea-letter ships and vessels in the ports of the United States, it left numerous openings for commerce with the outside world. It did not restrain vessels engaged in the coasting trade. Nothing was easier than for a vessel to load with provisions for Boston or Charleston and, once at sea, go wherever she liked. For such evasions the law provided no punishment. Before the 1st of January, collectors were beset by captains asking for coasting licenses in exchange for ship registers. To meet this difficulty, a supplementary act was passed (January 9) putting coasting and fishing vessels under heavy bonds, and making them liable to severe penalties in case of engaging in foreign trade or entering a foreign port.

A supplementary act.

But the net which the two laws threw around commerce with the outside world was not tight enough to accomplish its object. By taking circuitous routes, commerce could go on as before. The trade with England through Canada, and with France through the Floridas, was left untouched. If Jefferson's great weapon was to inflict on the two robbers all the injury of which it was capable, all commerce with the outside world, by land as well as by sea, must cease. To this end, a bill was introduced in February, the object of which, in the language of Barent Gardenier, was to stop up "every hole as big as a wheat-straw" through which commerce with the rest of the

Second supplementary act.

world, by land or by sea, could be carried on. Schouler says (II., 160) that protection of private property was the real purpose of the embargo legislation.* This assertion is contradicted by scores of Jefferson's letters. In a letter to Dearborn (July 16, 1810), he said: "I have ever been anxious to avoid a war with England, unless forced by a situation more losing than war itself. But I did believe we could coerce her to justice by peaceable means, and the embargo, evaded as it was, proved it would have coerced her had it been honestly executed." † But if Jefferson's letters had been silent on the subject, the bill introduced in February and passed in March would disprove Schouler's assertion. In debating the bill, Gardenier asked with great force "whether to prevent the farmers of Vermont from selling their pigs in Canada is calculated to increase or diminish our essential resources?" ‡

Object of the embargo.

That the object of the embargo legislation can still be misconceived by a competent historian is perhaps the greatest tribute that has ever been paid to Jefferson's remarkable power over men. In the same speech, Gardenier said: "All our surplus produce will rot on our hands. God knows what all this means! I cannot understand it. I see effects, but I can trace them to no cause. . . . Darkness and mystery overshadow this House and

* This statement is inconsistent with a number of other passages in his account of the embargo.

† Works, V., 529.

‡ Annals of Congress, 1807–1808, 1654.

the whole nation. We know nothing; we are permitted to know nothing. We sit here as mere automata; we legislate without knowing; nay, sir, without wishing to know why or wherefore." Jefferson knew why they legislated: they did it at his request, and he requested it in order to make commercial restrictions take the place of war.

It soon became evident that the second supplementary act left openings for foreign commerce. A shipper at Charleston applied for a clearance to carry five hundred hogsheads of New England rum to New Orleans. Wondering how it happened that there was so much New England rum at Charleston, the collector sent an inspector to investigate. The hogsheads were full of rice! The shipper intended to take the rice to Havana, exchange it for rum, take that to New Orleans, and have the collector at New Orleans certify that the rum had been landed in the United States as the law required. With this certificate he expected to release the bond which every vessel was obliged to give in order to leave port. To meet such cases a third supplement to the embargo was passed (April 25). This act forbade sea-vessels to take on board any cargo whatever unless it was done in the presence of a revenue officer. All unusual collections of food and merchandise in ports adjacent to foreign territory were to be seized and held until bonds were given by their owners that they should not be carried out of

Third supplementary act.

the United States. No ship was to be permitted to sail to such ports without special permission from the President, nor to any port if the collector had reason to believe that the captain intended to evade the embargo laws. All ships and boats on lakes, rivers, and bays were required to give collectors manifests of their cargoes, and proofs, within two months, that these cargoes had been landed in the United States.* Certainly it was not the fault of Congress if commercial restrictions failed to make the British government revoke its despotic orders.

The embargo provokes insurrection.

But Jefferson had a difficult problem to solve. Could he starve England into respecting the rights of the United States without starving the United States into insurrection? On April 19, he was obliged to issue a proclamation declaring that a number of persons in the neighborhood of Lake Champlain had combined to resist the embargo laws, and calling on the civil and military officers of the government to put down the insurrection.† Huge rafts of lumber were collecting near the boundary-line, one of them said to be a half-mile long, with a ball-proof fort, defended by several hundred men, prepared to set the custom-house officers at defiance. This raft contained the surplus produce of Vermont for some time past. Jefferson had compelled the people of Vermont to choose between getting nothing for their labor and insurrection.

* Annals of Congress, 1817–18, 2870–74.
† Ibid., 1808–1809, 580.

Early in May, Jefferson set about the difficult task of devising plans for supplying different parts of the country with those necessaries for which they had depended upon other parts of the country, without creating openings for the evasion of the embargo laws. He wrote to Gallatin, May 6: "The great leading object of the legislature was, and ours in execution of it ought to be, to give complete effect to the embargo laws. They have bidden agriculture, commerce, navigation, to bow before that object, to be nothing when in competition with that. Finding all endeavors at general rules to be evaded, they finally gave us the power of detention as the panacea, and I am clear we ought to use it freely that we may, by a fair experiment, know the power of this great weapon, the embargo. Therefore, to propositions to carry flour into the Chesapeake, the Delaware, the Hudson and other *exporting* places, we should say boldly, 'It is not wanted there for consumption, and the carrying it there is too suspicious to be permitted.' . . . When you are doubtful, consider me as voting for detention, being satisfied that individuals ought to yield their private interests to this great public object."* The same day he sent a circular to the executives of those states which did not produce wheat enough for their own consumption, asking them to give to merchants in whom they had confidence permits to bring in such amounts of flour

Jefferson's energy in supporting the embargo.

* Works (Washington's Edition), V., 287.

as the governors and the states thought necessary. In accordance with this circular, Governor Sullivan of Massachusetts issued permits before the middle of June authorizing merchants to import by water from other states fifty thousand barrels of flour and one hundred thousand bushels of corn, besides a large quantity of rice and rye. As soon as Jefferson heard of it (July 16), he wrote to Sullivan asking him not to give any more permits, "that we may not unnecessarily administer facilities to the evasion of the embargo laws."* Sullivan replied that the seaport towns derived their breadstuffs almost entirely from the Southern and Middle states; that the people of the interior depended for their fine bread and pastry on importations from the South; and that within three weeks after he had refused to issue permits, an artificial and actual scarcity would involve the state "in mobs, riots, and convulsions pretendedly on account of the embargo." Open opposition soon appeared, not in Massachusetts or New England alone, but along the whole Canadian border. But it did not diminish the energy of Jefferson. On May 27, he wrote to Gallatin: "I do not wish a single citizen in any of the states to be deprived of a meal of bread, but I set down the exercise of commerce merely for profit as nothing when it carries with it the danger of defeating the embargo." On July 12: "The declaration of the bakers of New York that their citizens will be dissatisfied, under the

* Works (Washington's Edition), V., 317.

present circumstances of their country, to eat bread of the flour of their own state, is equally a libel on the produce and citizens of the state. . . . My principle is that the conveniences of our citizens shall yield reasonably, and their taste greatly, to the importance of giving the present experiment so fair a trial that on future occasions our legislators may know with certainty how far they may count on it as an engine for national purposes." * When he heard of the evasions of the embargo laws by "fraud or force" in Newport, Portland, Machias, Nantucket, and Martha's Vineyard, he wrote to the Secretary of the Navy: "As I do consider the severe enforcement of the embargo to be of an importance not to be measured by money, for our future government as well as present objects, I think it will be admissible that during this summer all the gunboats actually manned and in commission should be distributed through as many ports and bays as may be necessary to assist the embargo." †

In the midst of these almost abnormally energetic attempts to enforce the embargo, while the daily lives of the masses of the people were controlled by the President of the United States to an extent without parallel in any other period of their history, while they were in effect told what they might eat, buy, and sell, Jefferson received a letter from Gallatin containing the following

* Works (Washington's Edition), V., 307, 309.
† Ibid., 316.

paragraph: "I am perfectly satisfied that if the embargo must be persisted in any longer, two principles must necessarily be adopted in order to make it efficient: first, that not a single vessel shall be permitted to move without the special permission of the executive; second, that the collectors be invested with the general power of seizing property anywhere, and taking the rudders, or otherwise effectually preventing the departure of any vessel in harbor, though ostensibly intended to remain there,—and that without being liable to personal suits. I am sensible that such arbitrary powers are equally dangerous and odious. . . . But a restrictive measure like the embargo could not be enforced without the employment of means as strong as the measure itself." * Jefferson's reply is interesting: "I am satisfied with you," he wrote, "that if the orders and decrees are not repealed, and a continuance of the embargo is preferred to war (which sentiment is universal here), Congress must legalize all *means* which may be necessary to obtain its *end*. . . . I am clearly of opinion this law ought to be enforced at any expense *which may not exceed our appropriations*." † Truly the policy of peace had led Jefferson into a strange position, when, for the sake of it, he was willing to advocate the passage of odious, dangerous, and arbitrary laws!

Gallatin's letter recommending the employment of arbitrary powers.

* July 29, 1808. Gallatin's Works, I., 396.

† August 11, 1808. Works (Washington's Edition), V., 336.

Bad as all this was, it was probably not the worst effect of the embargo, from the point of view of Jefferson. So unpopular was it that it was rapidly endangering Republican supremacy. Gallatin wrote him that if the embargo was not raised before the 1st of October, there was an almost even chance that the Republicans would lose the presidential election.* And this in the face of the fact that but four years before Jefferson had received one hundred and sixty-two out of one hundred and seventy-six votes!

*Adams' Gallatin, 373.

CHAPTER XXXIII.

THE EFFECT OF THE EMBARGO UPON NAPOLEON, GREAT BRITAIN, AND NEW ENGLAND.

ON February 25, 1808, Jefferson sent a message to Congress which, on its face, seemed to indicate that he had begun to have doubts about his substitute for war. He recommended Congress to add six thousand men to the regular army.

Jefferson recommends an increase of the regular army.

Hazardous as speculations as to motives are, one does not risk much in saying that the primary object of the recommendation was to assist the embargo. Knowing that the embargo was inflicting much suffering on England, Jefferson probably thought that the British government would be more likely to yield to its pressure if the alternative was the addition of one more to the terrible combination of powers that were arrayed against Great Britain.

It had been, as we know, one of the cardinal articles in the creed of the Republican party that standing armies are inimical to liberty. On February 17, only a week before the message was sent to Congress, Jefferson's son-in-law, John W. Eppes, a stanch Republican, declared on the floor of the House: "If we depend on regular troops alone, the liberty of the country must finally be destroyed by that army which is raised to defend it. I never yet have

Opposition of the Republican party to standing armies.

voted for a regular army or soldier in time of peace. Whenever an opportunity has offered I have voted them down; and, so help me God, I will as long as I live." *

But when a bill was introduced in accordance with Jefferson's recommendations it soon became evident that the Republican party was going to erase one more article of its creed. Clopton said that, although he was one of the minority of eleven who in 1798 voted against the bill for raising twelve additional regiments of infantry, he intended to support the measure before the House. The reason was that the probability of war appeared greater in 1808 than he had thought it ten years before. George M. Troup of Georgia avowed the Federalist doctrine, "To preserve peace or avert war you must prepare for war." † Even Nathaniel Macon, although he repudiated Troup's maxim, declared that he intended to vote for the bill; and Eppes, in spite of the emphatic declaration which he had so recently made against standing armies, supported the measure. "I consider it," he said, "as part of the system designed to meet the present crisis in our affairs. . . . The period must arrive when the embargo will be a greater evil than war." ‡

Debate on a bill to increase the regular army.

There were a few Republicans who could not so readily change their standpoint, even at the invitation of Jefferson. Richard Stanford of North Carolina,

* Annals of Congress, 1808, 1627, 1631.
† Ibid., 1817. ‡ Ibid., 2049.

after having expressed his surprise at finding himself forsaken by his friends, said: "This question of a standing army is among the number which involves first principles, and goes to mark the two great opposite political systems in our country. . . . I now beg leave to show, so far as recorded opinions can go to show, that, however small the minority in which I am now to vote, I am contending only for the correctness of first principles." He reminded the House that during the celebrated "repealing session" the army of five thousand was reduced to three thousand. He quoted from Jefferson's message (December 6, 1806) and from the speeches of Gallatin, Macon, and Varnum in 1798, to show that his own position was identical with the one they then maintained; and from the speeches of leading Federalists in the same year, to show that the position of the Republican defenders of the bill was now identical with theirs.

But Jefferson's recommendation bore down all opposition. The bill passed the House by a vote of ninety-five to sixteen, and became a law April 12, 1808.

A law passed authorizing the suspension of the embargo.

On April 22, a law was passed authorizing the President to suspend the embargo laws in whole or in part until twenty days beyond the next session of Congress, provided England or France or both had made such changes in their measures affecting neutral commerce as might render that of the United States "sufficiently safe."

On May 22, Madison wrote to Armstrong urging him to use his best endeavors to give to this law all "the effect possible with the French government." Madison had reason to suppose that Armstrong's efforts would be successful. On February 22, Armstrong had given him an account of a meeting of Napoleon's Council of Administration at which the French Emperor had declared "that the Americans should be compelled to take the positive character either of allies or enemies." As Madison proposed to have the United States take this character on condition that Napoleon revoked his decrees as to the United States, Madison naturally supposed that they would be revoked. But he was mistaken. "We have somewhat overrated our means of coercing the two great belligerents," Armstrong wrote bluntly August 20; "the embargo is a measure calculated above any other to keep us whole and in peace, but beyond this you must not count upon it. Here it is not felt, and in England it is forgotten."* Napoleon indeed approved the embargo as a "generous determination of renouncing all commerce, rather than acknowledge the domination of the tyrant of the sea," and in a *neighborly* way helped the United States to enforce it. He issued from Bayonne (April 17) a decree ordering the seizure of all

Napoleon declares that the Americans must take stand as allies or enemies.

* State Papers, III., 256. Pinkney, on the other hand, advised a continuance of the embargo. State Papers, III., 228.

American vessels in Spain, Italy, France, and the Hanse Towns.* When Armstrong remonstrated, Napoleon assured him that his decree was not unfriendly to the United States! Since the passage of the embargo laws, American vessels had no business in foreign ports. Those that pretended to be were either British vessels in disguise or American vessels that had "denationalized" themselves by paying a duty to England. This friendly act enabled Napoleon to rob the United States of more than two hundred and thirty ships for the benefit of the French treasury. The Republicans generally approved it. Vessels, they said, which had paid a tax to England deserved to be captured. The Federalists, on the other hand, denounced it as an outrage. †

The Bayonne Decree.

* Correspondence of Napoleon, XVII., 19. State Papers, III., 291.

† Napoleon's explanation to Robert Livingston of his decree at Bayonne, and Jefferson's comments upon it, are interesting. "We are obliged to embargo your ships," said Napoleon; "they keep up a trade with England; they come to Holland with English goods; England has made them tributary to her. This I will not suffer. Tell the President from me, when you see him in America, that if he can make a treaty with England, preserving his maritime rights, it will be agreeable to me; but that I will make war upon the universe, should it support her unjust pretensions. I will not abate any part of my system." "The explanation of his principles given you by the French Emperor in conversation," wrote Jefferson to Livingston, "is correct as far as it goes. He does not wish us to go to war with England, knowing we have no ships to carry on that war. To submit to pay to England the tribute on our commerce which she demands by her Orders in Council, would be to aid her in the war against him, and would give him just ground to declare war with us. He

That Napoleon should approve the embargo was natural. The injuries inflicted by it upon his empire and its dependencies were not to be compared with those inflicted upon them by his wars and his Continental System. The question with him was not whether he suffered from the embargo, but whether England suffered more. When he was trying to conquer England by destroying her commerce, the embargo rendered him very great service. Next to war, and the exclusion of all British ships and merchandise from American ports, the United States could have pursued no policy so well calculated to assist him. Jefferson knew this. The despatches of Armstrong had made him familiar with the plans of Napoleon. But to recommend the embargo with the knowledge that it tended to promote the plans of Napoleon was one thing; to do it with that end in view was quite another. Jefferson intended to make Napoleon serve his ends; he did not intend to serve the ends of Napoleon. In the game which both of them were playing, each was trying to use the other. Napoleon was trying to make Jefferson help

Napoleon's approval of the embargo.

concludes, therefore, as every rational man must, that the embargo, the only remaining alternative, was a wise measure. . . . Had the Emperor gone further and said that he condemned our vessels going voluntarily into his ports in breach of his municipal laws, we might have admitted it rigorously legal, though not friendly. But his condemnation of vessels taken on the high seas by his privateers, aud carried involuntarily into his ports, is justifiable by no law, is piracy, and this is the wrong we complain of against him."—Jefferson's Writings (Washington's Edition), V., 370.

him break down what seemed to be the only serious obstacle in his path to the empire of the world. Jefferson hoped that Napoleon's Continental System would help the Administration to compel Great Britain to respect the rights of the United States.*

On April 30, Madison wrote to Pinkney, urging him also to give to the law authorizing the suspension of the embargo "all the effect possible with the British government. In order to entitle the British government to a discontinuance of the embargo as it applies to Great Britain, it is evident that all its decrees, as well those of January, 1807, as of November, 1807, ought to be rescinded as they apply to the United States." †

Napoleon's reverses.

When Pinkney received the letter, the reverses which terminated with the island of St. Helena had begun. The attempt of Napoleon to seat his brother Joseph on the throne of Spain—to make that kingdom a province of France in name as well as in fact—had led to a patriotic and heroic uprising of the Spanish people. The memory of their former greatness animated them to sublime exertions. The ports of Spain and her colonies were thrown open to English commerce, and Napoleon's Continental System, of which "extent and continuity were vital principles," according to Canning, was "broken into fragments, utterly harmless and con-

* Works (Washington's Edition), V., 275. Jefferson to Rodney.
† State Papers., III., 222.

temptible." England was intoxicated with joy. Already in imagination she was exulting over the downfall of her hated enemy. She alone of all the powers of the world had successfully defied him, and that, too, when the continent of Europe was behind him. And was she now, upon the offer of a man whom she despised as the ruler of a nation of boors and cowards, and whom she hated as the ally in disguise of Napoleon—was she, upon the offer of Jefferson, to recall her decrees against American commerce? Pinkney knew better. Nevertheless, August 23, 1808, he obeyed his instructions, but he could hardly have anticipated the insult to the American government of which his letter to Canning was to be the occasion. Canning insisted that Pinkney should make the offer of the United States in writing, apparently in order that the British minister might proclaim to all the world how low was the esteem in which the United States was held by England.

England's reply to the embargo.

After the trite and insincere defence of the English decrees on the ground of retaliation, Canning said that England could not buy off the embargo if it were regarded as a measure of hostility, or complain of it if it were regarded as an innocent municipal regulation. And then he proceeded to charge Jefferson with being a party to the plans of Napoleon. "The government of the United States," he said, "is not now to be informed that the Berlin Decree of November 21, 1806, was the practi-

cal commencement of an attempt not merely to check or impair the prosperity of Great Britain, but utterly to annihilate her political existence, through the ruin of her commercial prosperity; that in this attempt almost all the powers of Europe have been compelled, more or less, to co-operate; and that the American embargo, though most assuredly not intended to that end (for America can have no real interest in the subversion of the British power, and her rulers are too enlightened to act from any impulse against the real interests of their country), but by some unfortunate concurrence of circumstances, without any hostile intention, the American embargo did come in aid of the 'blockade of the European continent' precisely at the very moment when, if that blockade could have succeeded at all, this interposition of the American government would most effectually have contributed to success." With a condescension that was more insulting than his sarcasm, he took occasion to express the friendly interest which Great Britain felt in the prosperity of the United States: "His Majesty would not hesitate to contribute, in any manner in his power, to restore to the commerce of the United States its wonted activity; and if it were possible to make any sacrifice for the repeal of the embargo, without appearing to deprecate it as a measure of hostility, he would gladly have facilitated its removal, as a measure of inconvenient restriction upon the American people." But there was one paragraph more insulting to the gov-

ernment than Pinkney himself knew, because he did not know the sort of "reparation" for the attack on the "Chesapeake" which Rose had been sent to the United States to make. "The undersigned is commanded, in conclusion, to observe that nothing is said in Mr. Pinkney's letter of any intention to repeal the proclamation by which the ships of war of Great Britain are interdicted from all those rights of hospitality in the ports of the United States which are freely allowed to the ships of his Majesty's enemies." This, he said, was nearly equivalent to direct hostility after the "willingness professed and the attempt made" to make due reparation for the attack on the "Chesapeake"! *

Pinkney's letter to Canning.

The ability and dignity of Pinkney's reply tempt one to quote from it at length. He showed with the clearness of demonstration that England was left without a shadow of a pretext for enforcing her orders against this country after the United States had offered to withdraw the embargo on condition that the Orders in Council should be revoked. He said that "upon your own principles it would be extremely difficult to decline my proposal," since "your orders inculcate as the duty of neutrals" precisely what the withdrawal of the embargo against England and the enforcement of it against France would accomplish; that the proposal of the United States enabled "you to withdraw with dignity, and even with advantage, what should not

* State Papers, III., 232.

have come between France and us; that its necessary tendency was to place us at issue with that power, or, in other words, in the precise situation in which you have maintained we ought to be placed if it should persist in its obnoxious edicts; that the continuance of our embargo, so modified, would be at least equivalent to your orders, for that, in their most efficient state, your orders could do no more as regards the United States than cut off its trade with France and the countries connected with her, and that our embargo remaining as to France and these countries would do exactly the same."*

Effect of the embargo upon England.

The effect of the embargo upon England might have been anticipated by a statesman whose opinions were determined by facts rather than temperament. We know that the policy of England towards the United States was shaped by the determination to depress a commercial rival; that the decision of her courts of admiralty, her "paper" blockades, her Orders in Council, all had as their primary object the prosperity of British commerce at the expense of that of the United States. Why did not the Administration consider that the interests which directed these attacks upon American commerce would be still more powerfully promoted by the entire withdrawal from the ocean of the merchant flag of the United States?†

* State Papers, III., 233.

† A British traveller, Lambert by name, gives a vivid description of the effect of the embargo on New York. "When I

But besides the shipping interests another powerful class had a strong pecuniary interest in the continuance of the embargo—the British landowners. The price of wheat advanced more than one hundred per cent in consequence of the embargo; and though this rise in price of one of the necessaries of life bore heavily on certain classes, these classes were precisely those whose influence counted for nothing with the British government—the inarticulate herd of British artisans. Thousands of British workingmen were doubtless reduced to the verge of starvation by the embargo; but of what avail was their dumb suffering when the cause of it swelled the wealth of the powerful shipowner and landlord? In still another respect the embargo promoted

arrived in New York in November" (1807), he says, "the port was filled with shipping and the wharves were crowded with commodities of every description. . . . All was noise and bustle. The carters were driving in every direction. . . . The coffee-house slip and the corners of Wall and Pearl streets were jammed up with carts, drays, and wheelbarrows; horses and men were huddled promiscuously together, leaving little or no room for passengers to pass. . . . But on my return to New York the following April, what a contrast was presented to my view! . . . The port indeed was full of shipping; but they were dismantled and laid up. . . . The streets near the waterside were almost deserted, the grass had begun to grow upon the wharves. . . . In short, the scene was so gloomy and forlorn that, had it been the month of September instead of April, I should verily have thought that a malignant fever was raging in the place; so desolating were the effects of the embargo, which in the short space of five months had deprived the first commercial city in the States of all its life, bustle, and activity; caused above one hundred and twenty bankruptcies; and completely annihilated its foreign commerce." —Lambert's Canada, II., 65, 66.

British interests. England had complained, and with good reason, of the number of desertions from the British navy since the outbreak of the war with Napoleon. It was on this ground, to a considerable extent, that she justified her practice of impressment. But the embargo not only stopped desertions from the British navy; it drove thousands of American sailors into the service of England through the lack of any occupation in their own country.*

The result of the embargo which deserved most attention from Jefferson in the closing months of his administration was not its influence upon France and England. On January 9, 1809, in accordance with a report made by Gallatin, a law was passed conferring upon the executive more "odious," "arbitrary" and "dangerous" powers than have ever been conferred by any other law passed by Congress, with the possible exception of the Alien Law. This law, among several odious provisions, made it the duty of collectors, acting under directions to be given by the President, to seize any goods of home growth or

Enforcing Act.

* Lambert's testimony on this point, also, is suggestive: "There were upwards of one thousand [sailors] in the city [Charleston], who, since the embargo, had become very riotous, having no employ; and several were absolutely destitute of lodging and food. In the course of a week or two, the English consul advertising that British seamen might have a free passage home in the British ships that were going to Europe, upwards of four hundred availed themselves of the offer, and sailed for England."—Loc. cit., 162.

manufacture which they might find in any kind of boat, or in any kind of vehicle going towards the sea or boundary-line, and hold them till heavy bonds were given that they should not be taken out of the United States.

This Enforcing Act, as it was called, was more than the Federalists of New England could bear. We know how ready some of them were to organize a Northern Confederacy in 1805, and how their plans were thwarted by the apathy of the masses of their party in New England. The Enforcing Act, the climax of a long series of measures that the New England Federalists regarded as hostile to their interests, aroused them from their apathy, and made them feel that the yoke which their "Southern masters" had laid upon them was too grievous to be borne. We have seen how the foreign policy of Jefferson was warped by the desire to gain West Florida through the influence of Napoleon. That influence had caused the President and the Republican Congress to close the ports of San Domingo to American commerce at the command of Napoleon, and meekly submit to the insults and robberies of Spain and the defiance of France, while they resented British outrages with a Non-importation Act. But the Federalists, unaware of this influence, attributed the foreign policy of the government to an entirely different cause. They supposed it to be due to the same partiality for France and hatred of England that had

Federalist theory of Jefferson's foreign policy.

exerted so powerful an influence upon the Republicans during the administrations of Washington and Adams. They believed that Jefferson did not wish to be on friendly terms with England. He had indeed, in 1806, seemed to imitate the example of Washington by sending Pinkney on a special mission to London. But if he had wished his ministers to make a treaty, they said, he would not have hampered them with impossible conditions and irritated England with a Non-importation Act. He had instructed them to make no treaty in which the assumed right of impressment was not abandoned, because he knew that in the struggle in which England was engaged it would be suicidal for her to abandon it. The same hostility to England, in the opinion of the Federalists, was shown in his management of the "Chesapeake" affair. He was justified, they said, in issuing his proclamation; but when England disavowed Admiral Berkeley, the proclamation should have been recalled. To refuse to recall it was an act of hostility at which England might justly take offence. They did not know that Rose's mission had failed because the "reparation" which he had come to make was more insulting than the original offence—that it consisted essentially in demanding an apology from the United States and the punishment of Commodore Barron. They supposed that it had failed because Jefferson refused to recall his proclamation, and they attributed that refusal to the wish to put one more obstacle

in the way of friendly relations with England. When he recommended the embargo, they believed that it was done at the command of Napoleon. It was not, they said, on account of the November Orders in Council, because these were not known when the embargo was recommended. No, it was only a "milder form of compliance" with the demand of Napoleon that the ports of the United States, "like those of his vassal states in Europe," should be closed against British commerce. It was to obey the command of the "modern Attila," as they considered him, "the most ruthless tyrant" that had "scourged the world since the Roman Empire fell," that Jefferson was willing to have the grass grow on the streets of Northern cities and let their vessels slowly rot at their wharves. The Federalists forgot that the wheat and tobacco and cotton of the Southern planters lay unsold in Southern barns. In the blindness of their anger, they saw only the misery which the embargo was bringing to their own doors.

They contrasted the attitude of the Administration towards the two belligerents. England insulted us, violated our rights, and we replied with a Non-importation Act, an unfriendly proclamation, and an embargo. France insulted us, violated our rights, and we replied with remonstrances, memorials, and protests. Moreover, many Federalists thought that the duty and interest of the United States alike required that England should not be placed simply on a footing of equality with her enemy. She was fighting, they believed, the

battles of the civilized world. Fisher Ames could hardly speak of his children in the last months of his life without expressing his fears that they were doomed to be subjects of Napoleon. Great Britain was "the last hope of the world." Her unscrupulous enemy, with the resources of continental Europe at his command, declared that his will was to be the public law of the world. When England was struggling with such an enemy, should she permit herself to be hampered and fettered by principles of public law which her enemy despised? Should the United States raise a hue and cry about the search of its merchant-vessels for deserters when those deserters were wanted to fight the battles of the civilized world? Were they under such circumstances to complain that native Americans themselves were sometimes impressed? Were they to insist on this and that right of neutrals when those rights were invaded by England in defence of the few nations whom the colossal power of Napoleon had left in a state of neutrality?*

Effect of embargo legislation upon New England.

With such views of the foreign policy of the United States, and of the nature of the struggle between England and Napoleon, it is easy to realize to some extent, at least, the effect of the embargo, especially upon the Federalists of

* See Pickering's letter to Governor Sullivan in 1808; New England Federalism; Fisher Ames' Works; Pickering's Review of the Cunningham Correspondence; and Annals of Congress, 1808–1809, especially speeches of Bayard, Pickering, Gardenier, Hillhouse, and Josiah Quincy.

New England. Some of them began to think of nullification. "What can Connecticut do?" asked Harrison Gray Otis of Josiah Quincy. "Is she ready to declare the embargo and its supplementary claims unconstitutional—to propose the appointment of delegates to meet those from the other commercial states in convention, at Hartford or elsewhere, for the purpose of providing some mode of relief?"* Many of them felt that they were not only justified in evading the embargo laws—that it was a crime not to evade them if they could. And this feeling was shared to a great extent by men of all parties in New England. In a speech delivered in the Senate in February, 1809, Bayard said: "We all know that the opposition to the embargo in the Eastern States is not the opposition of a political party or of a few discontented men, but the resistance of the people to a measure which they feel as oppressive and regard as ruinous."† When, therefore, the Enforcing Act was passed, all New England was soon echoing and re-echoing with protests and threats of resistance. An extract from the proceedings of the town of Augusta, in Maine, will give a fair idea of the resolutions passed by a hundred New England towns and cities: "The awful crisis has arrived when it becomes necessary for the friends of our independence to make a firm and decided stand—when it becomes all-important to throw aside

*Quincy's Life of Quincy, 165.
†Annals of Congress, 1808–1809, 403.

minor considerations and unite for the common good; and when a sense of common danger draws us together to meet the approaching storm. With submission amounting almost to criminal apathy, we have suffered privations and restrictions never before expected of or endured by a free people. Now that even the means of subsistence is at hazard, and the sacred asylum of our dwellings is no longer held inviolable, silence would be a crime, and resistance would become a virtue of the first magnitude." * When the bill for enforcing the embargo was before the Senate, Hillhouse of Connecticut said: "In my mind the present crisis excites the most serious apprehensions. A storm seems to be gathering which portends, not a tempest on the ocean, but domestic convulsions. However painful the task, a sense of duty calls upon me to raise my voice and use my utmost exertions to prevent the passage of this bill. I feel myself bound in conscience to declare, lest the blood of those who should fall in the execution of this measure may lie on my head, that I consider this to be an act which directs a mortal blow at the liberties of my country, an act containing unconstitutional provisions to which the people are not bound to submit, and to which, in my opinion, they will not submit." †

This, then, was what Jefferson saw in the closing weeks of his administration as a result of his policy of peace: Napoleon approving it, England defying it, and

* Olive Branch, 148.
† Annals of Congress, 1808–1809, 298.

New England on the verge of rebellion. He had meant it to work a revolution in the foreign policy of the country; he found it in danger of working a revolution in the government, and the overthrow of the Union.

CHAPTER XXXIV.

SUBMISSION OR WAR?

AFTER the rejection of Monroe's treaty, Monroe was inclined to sulk in his tent. He felt that the Administration had set him an impossible task, and rejected his treaty without due consideration because he had gone contrary to his instructions. Monroe's attitude inclined most of the Republicans who were dissatisfied with the Administration, and especially those who disliked Madison,—who was known to be Jefferson's candidate,—to make Monroe their candidate for the presidency. It seemed likely for a time that the unpopularity of the embargo would lead to the defeat of Madison if the Federalists and anti-Administration Republicans could combine on a single candidate. But as Madison was selected by the Republican caucus, party discipline prevailed, and he was elected by one hundred and twenty-two out of a total of one hundred and seventy-six electoral votes. George Clinton was elected Vice-President.

Presidential election.

Before the result of the election was officially known, Jefferson practically threw down the reins of government. When Congress met on November 7, 1808, he acknowledged in his message that his "candid and liberal experiment"—offering to England and Napoleon to suspend the embargo on certain conditions—"had failed." He said that it

Jefferson and the embargo.

must "rest with the wisdom of Congress to decide on the course best adapted" to the existing state of things. Gallatin, whom Madison intended to make his Secretary of State, urged Jefferson to recommend some positive course. But in vain. It was evident that the embargo could not be continued much longer, and Jefferson could not recommend its repeal. The theory of commercial restrictions as a means of coercion had been the dream of his life—his one great piece of constructive statesmanship. In all of his hopes for playing a great part in history in advancing the interests of the world, this theory had been an important element. He had hoped to be the philosophic statesman, the humanitarian ruler, whose destiny it was to prove to the world that the brutalities and barbarisms of war could be dispensed with. And now to admit that his life-long dream was, after all, only a dream! To admit that, in spite of his efforts to save them from it, the American people must travel over the same road that had proved so fatal to the happiness and liberties of the race! To sign the death-warrant of his favorite child—the offspring of all his philanthropic hopes! It was too much, and apparently the one great hope that animated him in the closing months of his administration was to be spared the humiliation of signing a repeal of the embargo. He could not bring himself to admit that his policy of peace as a whole had failed. "If we go to war now," he said, "I fear we may renounce

forever the hope of seeing an end of our national debt. If we can keep at peace eight years longer, our income, liberated from debt, will be adequate to any war, without new taxes or loans, and our position and increasing strength will put us *hors d'insulte* from any nation." "If we can keep at peace"—but how was that possible? How was the United States to remain at peace when the two greatest powers in the world insisted on making war upon it? Jefferson refused to say. On December 27, 1808, he said: "I have thought it right to take no part in proposing measures the execution of which will devolve on my successor. I am therefore chiefly an unmeddling listener to what others say."*

Madison's policy.

As he would formulate no plan that looked beyond the close of his administration, Madison and Gallatin were obliged to take the responsibility. Their plan was to continue the embargo till June 1, pass a total Non-intercourse Act against

* Works (Washington's Edition), V., 404. This statement is not true, if we can rely on the testimony of Joseph Story, who went to Washington to take his seat as a Republican member of Congress in December, 1808. "I found," he said, "that as a measure of retaliation the [embargo] system had failed, but that Mr. Jefferson, from pride of opinion as well as from that visionary course of speculation which often misled his judgment, was absolutely bent on maintaining it at all hazards. He professed a firm belief that Great Britain would abandon her Orders in Council if we persisted in the embargo; and having no other scheme to offer in case of the failure of this, he maintained in private conversation the indispensable necessity of adjourning Congress without any attempt to limit the duration of the system."—Life of Story, I., 185.

both France and England, providing for a suspension of it in favor of the one which might revoke her anti-neutral decrees, and, in the event of failing to secure such revocation, call a special session of Congress, and declare war against both powers. The Non-intercourse Act would remove England's "grievances" by placing her on an equality with France. England had complained of the Non-importation Act which had gone into effect in 1807, and of the proclamation issued by the President on account of the "Chesapeake" affair, as unjustly discriminating against her in favor of Napoleon. With these complaints removed, Madison and Gallatin believed that England would revoke her orders when she saw that war was the alternative, and that the "obstinate Emperor" would persist in his course, so that war with Napoleon would follow, England becoming our ally.*

To prepare Congress for such a policy, Gallatin wrote a report which may be regarded as in a sense the message of the incoming administration. The report was presented November 22 by G. W. Campbell, who was chairman of the committee to whom had been referred that part of the President's message which related to foreign affairs. It aimed to show that there was "no other alternative but

Campbell's report.

* See letter of Orchard Cook, a representative from Massachusetts, to J. Q. Adams, December 29, 1808. Adams MSS., quoted by Henry Adams, IV., 369. Cf. Story's Life of Story, I., 172.

abject and degrading submission; war with both nations, or a continuance and enforcement of the embargo. . . . War with one of the belligerents only, would be submission to the edicts and will of the other; and a repeal in whole or in part of the embargo must necessarily be war or submission. . . . A partial repeal must, from the situation of Europe, necessarily be actual submission to one of the aggressors and war with the other."

As the measure finally decided on was partial repeal, it is important to consider the arguments by which Gallatin sought to prove beforehand that it was equivalent to submission. "It is said that the adoption of that proposition"—to repeal the embargo except as to France and her allies and England—"would restore our commerce with the native powers of Asia and Africa, and with Spain, Portugal, Sweden, and Russia." Assuming it to be true, the effect of it "would be to open an indirect trade with Great Britain which, through St. Bartholomew and Havana, Lisbon, Cadiz, or Gottenburg, would receive, at prices reduced by glutted markets and for want of competition, all the provisions, raw materials for her manufactures, and other articles which she may want. . . . A measure which would supply exclusively one of the belligerents would be war with the other." To supply Great Britain exclusively "can only be defended on the ground that France is the only aggressor, and that, having no just reason to complain of England, it is our duty to submit to her." That suppo-

sition being inadmissible, the painful alternative was the continuance of the embargo or war with both powers.

But a permanent embargo would "not properly be resistance: it would be withdrawing from the contest, and abandoning our indisputable right freely to navigate the ocean." Whether the embargo were made permanent or repealed, therefore, the alternative would equally be war or submission. The chief reason for hesitation, since the choice ultimately lay between submission and war, was the necessity, if war were resorted to, of making it at the same time against the two most powerful nations in the world.

The report concluded with recommending three resolutions. The first declared that the United States could not, without a sacrifice of its independence, submit to the edicts of Great Britain and France; the second, that it was expedient to exclude from the ports of the United States all the ships and goods of those powers that violated the neutral rights of the United States; the third, that the country should at once be put in a more complete state of defence.*

The debate upon these resolutions continued from November 28 until December 17, and whatever it may have left in doubt, one thing was clear: there was no war party in the country. Josiah Quincy, a bitter Massachusetts Federalist, in his first speech did indeed seem to lean to war. "The path

Debate upon Campbell's report.

*Annals of Congress, 1808–1809, 514–521.

of duty," he said, "is as distinct as the milky way. . . . It is the path of active preparation—of dignified energy. It consists in taking the nature of things as the measure of the rights of your citizens, not the orders and decrees of imperious foreigners. Give what protection you can. Take no counsel of fear. Your strength will increase with the trial, and prove greater than you are now aware. But I shall be told that this may lead to war. I ask, Are we now at peace? Certainly not, unless retiring from insult be peace—unless shrinking under the lash be peace. The surest way to prevent war is not to fear it. The idea that nothing on earth is so dreadful as war is inculcated too studiously among us. Disgrace is worse. Abandonment of essential rights is worse." But this warlike talk was not serious. Quincy believed, as Hildreth afterwards did, "that the two bugbears of abject submission on the one side, and on the other war at the same time with both France and England," had been "theatrically brought in, from opposite directions, to frighten Congress and the people into acquiescence in the embargo." * Quincy wanted no war, at least with England. His "path of duty" was a means of getting rid of the embargo. The Federalist theory being that the difficulties of the United States with England grew out of the partiality of the Administration for France, the Federalists wanted an abandonment of the embargo system "root and branch." "Repeal the Embargo and

* Hildreth, VI., 98.

Non-importation acts," they said; "rescind the proclamation," resist the French edicts which first made war on our rights, and the difficulties with England would vanish, the Orders in Council would be withdrawn.*

But while the Federalists advocated what Gallatin called "abject and degrading submission," not a voice on the Republican side was raised in behalf of war. Admitting the reasoning of the report, that the choice lay between war, embargo, and submission, they urged the continuance of the embargo, although the report had shown that a permanent embargo was submission. The truth must be told: the representatives of the American people in 1808 were afraid to declare war! The American people had been made to act the part of cowards so long that they had begun to think that the play represented the reality. As Troup of Georgia said, they had become so familiar with outrages that they ceased to be moved by them. "Two years ago you were willing to go to war to limit the right of search; you would have gone to war to prohibit the practice of impressment; you would have gone to war to overthrow the lawless system of blockade; you would have gone to war for the colonial trade, for the attack on the 'Chesapeake'; two years ago you would have gone to war for the Orders in Council: and now that all these outrages, and more than these, have accumulated on your head, until you are bowed down to the earth, you are content

* Barent Gardenier, Annals of Congress, 1808–1809, 851.

to beg a little commerce of England!" But in the same speech Troup himself showed how lacking he was in all proper sense of the dignity and honor of the nation. "The people of this country," he said, "want peace as long as they can preserve it with honor. And do you think, sir, we are ready to plunge headlong into a ruinous war, naked and unarmed, to gratify a few bankrupt commercial speculators?" * Bent to the earth, as Troup said the nation was, by the load of British outrages, he could yet talk about the preservation of peace with honor! And the noteworthy fact is that his remark struck nobody as ridiculous. No one interrupted him, amidst shouts of derisive laughter, to ask how a nation which for three years had allowed itself to be insulted and outraged, and at last treated as a province with no rights save such as England and France might deign to grant, could talk about honor.

The three resolutions carried.

At the close of the long debate, the three resolutions were carried. By a vote of one hundred and eighteen to two the House of Representatives said that the United States could not submit to the edicts of Great Britain and France without a sacrifice of independence. But the debate which preceded the vote showed how little the vote meant. The Federalists believed that the embargo could be repealed, and no resistance offered to England without submission. The Republicans believed that to repeal the embargo

* Annals of Congress, 1808–1809, 604–606.

without declaring war was submission, and, while the opposition to the embargo in New England was making it more and more evident that the embargo could not be enforced much longer, they were unwilling to declare war. Evidently Gallatin was right when he said: "A majority will not adhere to the embargo much longer, and if war be not speedily determined on, submission will ensue." *

* Gallatin to Nicholson, December 29, 1808. Adams' Gallatin, 384.

CHAPTER XXXV.

SUBMISSION.

WHILE Madison and Gallatin were attempting to bring Congress to the point of repealing the embargo in favor of war, they were endeavoring to work on England through Erskine. They told Erskine that the alternative of the embargo open to the United States was war; that the people of the country were beginning to regard the embargo as too passive; and that America must be driven to endeavor to maintain her rights against the two greatest powers in the world, unless one of them should revoke her anti-neutral decrees. In that case, the United States would side with that one against the other, provided the other persisted in its war upon the commerce of the United States.* Madison hoped through Erskine to induce England to revoke her decrees when she saw that it would result in a war between the United States and Napoleon.

Conversations of Madison and Gallatin with Erskine.

Before the vote on the resolutions recommended by Campbell's report had been taken, Gallatin presented his annual report on the finances (December 10, 1808). It amounted to a recommendation of war. He told Congress that even in case of war against both England and France, no internal taxes

Gallatin's annual report.

*Erskine to Canning, December 4, 1808. Cobbett's Debates, Vol. XVII., Appendix CXXXV.

were contemplated.* Internal taxes, as we know, had always been bitterly opposed by the Republicans. Gallatin told them that they need not hesitate to declare war through fear of internal taxes. He said that loans should be principally relied on, and that the revenue derived from duties on imports would be amply sufficient, during long intervals of peace, not only to defray current expenses, but to pay the debts contracted in war.

In accordance with the policy of the incoming administration, Smilie offered (January 7, 1809) in the House of Representatives a resolution declaring that a committee should be appointed to take into consideration the propriety of providing by law for an early meeting of the next Congress. It was distinctly understood that the extra session was contemplated for the purpose of declaring war. In the debate on the bill providing for the extra session on the fourth Monday in May, J. G. Jackson, Madison's brother in-law, said: "I think, by passing this bill, we give the nation a pledge that it shall be the *ne plus ultra* which shall give to foreign nations time to revise their conduct towards us, and will give them time to consider whether or not they will have war with us." †

Extra session.

If the Federalists had believed this, if, through earnest conferences between the members of the Administration and the leaders of the Federalists, partisanship could have been subordinated to patriotism, if they could

* Annals of Congress, 1808–1809, 1765.
† Ibid., 1095.

have been convinced of the sincere desire of the Administration to isolate the enemies of the United States so that the country might have but one enemy to fight, and that enemy Napoleon, the United States would have been spared a great humiliation and a still greater danger. But they did not believe it. They believed that if war were declared against France and England, the war against France would be merely nominal, since France had no territory that we could attack without encountering the fleets of England. Many of them believed that the Administration had no idea of declaring war under any circumstances, that the proposed extra session for the purpose of declaring war was a mere trick to deceive the people. Quincy declared it such in a speech as remarkable for its ability as for its bitterness.

Quincy told the House that it had been deceived when it passed the embargo laws; that coercion was its real object, and not precaution as was pretended. He said that the proposed extra session had a similar object: that it was not intended that Congress should declare war under certain contingencies—that was a mere pretence; its real object was to delude the people into submitting to the embargo a little longer; that if the people would bear it, "this embargo will be continued, not only until next May, but until next September—yes, sir, to next May twelve months"; "that it was intended to persevere in the

Quincy's speech.

measure until it effect, if possible, the proposed object." He declared that "it was never intended by Administration to do anything else effectual for the support of our maritime rights. Sir, I am sick, sick to loathing, of this eternal clamor of war, war, war, which has been kept up incessantly on this floor, now for more than two years. Sir, if I can help it, the old women of this country shall not be frightened in this way any longer. I have been a long time a close observer of what has been said and done by the majority of this House, and, for one, I am satisfied that no insult, however gross, offered to us by either France or Great Britain could force this majority into a declaration of war. To use a strong but common expression, it could not be kicked into such a declaration by either nation." If the majority meant war, they would have prepared for it. What preparation had they made? They had built one hundred and seventy gunboats; they had in requisition one hundred thousand militia. "You talk of going to war against Great Britain with, I believe, only one frigate and five sloops of war in commission! And yet you have not the resolution to meet the expense of the paltry little navy which is rotting in the Potomac. . . . You go to war with all the revenue to be derived from commerce annihilated, and possessing no other resource than loans or direct or other internal taxes! You—a party that rose into power by declaiming against direct taxes and loans!" *

* Annals of Congress, 1808-1809, 1111-1114.

The sting of Quincy's taunts lay in their truth. After all the insults of England and France, the House could still vapor about the preservation of peace with honor! On January 20, the day after Quincy delivered his speech, the bill for an extra session passed by a vote of eighty to twenty-six.

Bill for an extra session becomes a law.

On the surface it looked as if the policy of Madison and Gallatin would be carried out to the letter. Their resolutions (recommended in Campbell's report and intended to commit the House to embargo or war) had been passed by an overwhelming majority; Erskine was writing despatch after despatch to prove to his government that if it did not revoke the Orders in Council, the United States would declare war against England in June. But Madison and Gallatin committed one fatal blunder. For some reason—perhaps because they regarded it as derogatory to the dignity of the government not to enforce the embargo laws as long as they remained laws, perhaps because they wished to drive the people into preferring war through the very odiousness of the alternative, perhaps because they yielded to the spell of Jefferson's influence, who permitted himself to hope that if the embargo were rigorously enforced, England would be compelled to revoke her decrees—they urged the Enforcing Act of which a preceding chapter has given some account, and which became a law January 9.

Congress apparently intends to declare war.

The discontent in New England at once rose to the point of danger to the Union.* A few radicals like Pickering, Otis, Gore, and Hillhouse had been ready to resort to extreme measures before. The passage of the Enforcing Act made their attitude infectious. When the legislature of Massachusetts met, a committee of the Senate to whom had been referred the numerous petitions relating to the embargo at once (February 1) recommended a law to protect the people of the state against the "unreasonable, arbitrary, and unconstitutional searches in their dwelling-houses" authorized by the Enforcing Act. Such a law would have been equivalent to nullification. When Secretary Dearborn wrote (February 4) to Governor Trumbull of Connecticut, requesting him to select militia officers to aid the collectors in enforcing the embargo, Trumbull flatly refused. "Conceiving as I do," he said, "and believing it to be the opinion of the great mass of citizens in this state, that the late law of Congress for a more rigorous enforcement of the embargo is unconstitutional in many of its provisions, . . . my mind has been led to a serious and decided determination to refuse compliance with your request, and to have no agency in the appointments which the President has been pleased to refer to me."

Nullification in New England.

* The discontent had for some time been very serious. See letter written by Joseph Story (Story's Life of Story, I., 174).

All the laws required to carry out the policy of Madison had been passed except one. On January 30, Wilson Cary Nicholas offered a resolution which contained the substance of the law yet to be passed if that policy was to prevail. Upon the fate of that resolution depended the question as to whether the United States would submit or go to war. The resolution was as follows: "*Resolved*, As the opinion of this House, that the United States ought not to delay beyond ——— to resume, maintain, and defend the navigation of the high seas; and that provision ought to be made by law for repealing on the ——— the several embargo laws, and for authorizing, at the same time, letters of marque and reprisal against Great Britain and France, provided on that day their orders or edicts violating the lawful commerce and neutral rights of the United States shall be in force, or against either of those nations having in force such orders or edicts."

Nicholas' resolution.

The resolution having been divided, Nicholas moved to fill the blank with the words "the first day of June." The debate began upon this motion, that on June 1 the embargo laws should be repealed. From the beginning of the debate it was evident that the majority realized that the danger of rebellion in New England made it necessary that the embargo should cease and that the alternative was not embargo or war, but war or submission. With an earnestness that was pathetic, David R. Williams of South Carolina

Debate upon it.

begged the representatives of New England to remember that they had a country. "You have driven us from the embargo. The excitements in the East render it necessary that we should enforce the embargo with the bayonet or repeal it. I will repeal it—and I could weep over it more than over a lost child. If you do not resist, you are no longer a nation; you dare not call yourself so—you are the merest vassals conceivable. . . . If avarice has so seized on our hearts as to take away wholly the love of country (and assuredly it has if we submit), for God's sake let me entreat gentlemen to make the best terms they can for us—to procure for us the miserable boon that the tax on us may be collected here, without compelling us to go to Britain to pay it."* To which Cook of Massachusetts replied: "We must take things as they are. . . . The South say, embargo or war; and the North and East say, no embargo, no war. . . . I lament that this difference exists; yet, as it does exist, we must take things as they are and legislate accordingly."† He was right. Representative after representative from the North and East urged a repeal of the embargo without war; representative after representative from the South begged that, if the embargo must be repealed, a declaration of war be made. But in vain. As one speaker put it, the embargo had so long been interposed between the people and British depredations that they had lost

* Annals of Congress, 1808–1809, 1238.
† Ibid., 1249.

their war spirit. On February 1, the House, in committee of the whole, rejected by seventy-three votes against forty, Nicholas' motion to repeal the embargo June 1, and the next day voted that the embargo should cease on the 4th of March.

Four days later, the second half of Nicholas' resolution was voted on. By a vote of fifty-seven to thirty-nine, the same House which less than two months before had declared that the United States could not submit to the decrees of Great Britain and France without a sacrifice of its honor and independence, declared that it would not authorize letters of marque and reprisal even if the decrees of Great Britain and France continued in force. That vote meant submission. The Non-intercourse Bill, introduced a few days later and passed the latter part of February, was only a thin veil to disguise from the American people the fact that their representatives had not courage enough to declare war. David R. Williams, whose passionate and patriotic protests against submission ought to rescue his name from oblivion, called the conduct of the House "contemptible cowardice."

Effect of embargo upon New England and the South.

It seems at first sight paradoxical that the section of country that suffered most from England's piracies upon our commerce should have been least disposed to resent them. But the paradox disappears when we learn that freights were so high that merchants could lose ten per cent by capture

and still make money. Further, all the trade which the United States carried on with the colonies of Spain and France was due to the war between France and England. No matter how much England interfered with the trade between the United States and the colonies of her enemies, so long as she permitted any, the United States had more than it might expect to have upon the return of peace. This was one of the reasons why the embargo was so much more unpopular in New England than in the South.

Another reason was the instantaneousness and directness of its action upon the shipping and dependent interests of New England. The sailors, draymen, shipwrights, and sea-captains, who were suddenly thrown out of employment, the vendors of pitch, tar, hemp, bacon, and salt fish, who found themselves with a greatly reduced market for their commodities, the shipowners, who were deprived of their profits, knew the cause of their losses beyond a doubt.

But the action of the embargo upon the planters of the South was neither instantaneous nor direct. The embargo made no change in their occupations. They planted and tended their cotton, rice, indigo, and tobacco as in preceding years. And if, when autumn came, they found a reduced market for their produce, they were able to be in doubt as to the cause. The enforcement of the Berlin Decree and the more rigorous Orders in Council had intervened since the last autumn, and who could

tell how much influence they would have had, if there had been no embargo, in reducing the price of their produce.*

The Non-intercourse Act closed the ports of the United States to all ships of France and England; forbade all importations from England and France; and repealed the embargo except as to Great Britain and France and their dependencies. It also authorized the President to suspend the law by proclamation and renew the trade with France or England in case either of these countries ceased to violate the rights of the United States, while it was to continue in force against the nation that persisted in enforcing its anti-neutral edicts. How much, or rather how little, it meant, the British minister saw clearly. He wrote to his government that England would derive great advantage from it, as, with her command of the ocean, she could procure, through neutrals, any of the produce of the United States, besides the immense quantity which would be carried directly to Great Britain under various pretences, while France

The Non-intercourse Act.

* Nevertheless the South suffered more from the embargo than did New England. There was no market for tobacco at any price, and wheat fell from two dollars to seventy-five cents a bushel. "Yankee" ingenuity enabled the New-Englanders to ward off, to some extent, the blow of the embargo, but it fell upon the South with crushing force. Virginia was driven to the verge of bankruptcy. Jefferson himself was almost ruined by the measure with which he had tried to maintain the honor of the country.

could obtain but little, and that at great expense and risk.

Jefferson signed the bill on March 1. Ten days later he mounted his horse to ride through snow and sleet to Monticello, never again to appear on the scene where he had wielded such imperial influence for the preceding eight years. Looking over these years, it is easy to see the two great mistakes of his two administrations. The first was in allowing the desire to gain West Florida, through the influence of Napoleon, to cause him not to resent the insults of Spain and the defiance of France. If he had yielded to the impulse which impelled him so strongly in the summer of 1805 to declare war on France and Spain, the overwhelming disaster of his second administration would never have been encountered. There would have been no English attacks upon our commerce, no embargo, and also no War of 1812 and no Hartford Convention. The mistakes as well as the evils of men live after them, and in the dangers and humiliations of the second war for independence, as the War of 1812 has been rightly called, the country was, in part, reaping the harvest which sprung from Jefferson's unfortunate policy with respect to West Florida. His second mistake was his recommendation of an embargo without limit as to time, especially when the recommendation was made under circumstances that made it possible for his enemies

The two great mistakes of Jefferson's administration.

to believe that he was in league with Napoleon against Great Britain and New England.

The complete and disastrous failure of the embargo settled the fate of Jeffersonian Republicanism. The dream of peace upon which its theory of foreign concerns was based was proved to be only a dream. The brutal and barbarous weapons which Republicans had hoped to be able to dispense with could not yet be thrown aside if nations would protect themselves against insults. But when the day comes, as come it will, when war shall be a thing of history, it will be one of Jefferson's claims to remembrance that he anticipated that day, that he strove by peaceable means to defend the rights of his country.

After all, it is as a Democrat, not a states' rights Republican, as a man who was devoted to the interests of the people and who believed in their capacity, that Jefferson lives, and will live, in history. In spite of all his mistakes, it was fitly said of him in one of the stormy debates of January, 1809, that "his acts ought to have induced all his former enemies to say, 'he has disappointed our expectations, and proved himself the supporter of that Declaration of Independence which was given to the world from his pen.'"

END OF VOL. I.

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